



FEDERAL REGISTER

Vol. 76 Tuesday,
No. 119 June 21, 2011

Pages 35957–36280

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see www.ofr.gov.

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at www.fdsys.gov, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Printing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, gpo@custhelp.com.

The annual subscription price for the **Federal Register** paper edition is \$749 plus postage, or \$808, plus postage, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see bookstore.gpo.gov.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 76 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche 202-512-1800
Assistance with public subscriptions 202-512-1806

General online information 202-512-1530; 1-888-293-6498

Single copies/back copies:

Paper or fiche 202-512-1800
Assistance with public single copies 1-866-512-1800
(Toll-Free)

FEDERAL AGENCIES

Subscriptions:

Paper or fiche 202-741-6005
Assistance with Federal agency subscriptions 202-741-6005

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, July 12, 2011
9 a.m.-12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



Contents

Federal Register

Vol. 76, No. 119

Tuesday, June 21, 2011

Agricultural Marketing Service

RULES

Decreased Assessment Rates:

Olives Grown in California, 35957–35959

PROPOSED RULES

Modification of Handling Regulations:

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, OR, 35997–36000

NOTICES

Recommended Requirements for State Regulatory Agencies

Adoption:

Milk for Manufacturing Purposes and Its Production and Processing, 36078–36079

Agriculture Department

See Agricultural Marketing Service

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 36078

Arts and Humanities, National Foundation

See National Foundation on the Arts and the Humanities

Children and Families Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 36132–36133

Coast Guard

RULES

Drawbridge Operation Regulations:

Connecticut River, Old Lyme, CT, 35978

Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal, Nassau, NY, 35978–35979

NOTICES

Certificate of Alternative Compliance for the Passenger Vessel CHICAGO'S LEADING LADY, 36138

Commerce Department

See Foreign-Trade Zones Board

See International Trade Administration

See National Oceanic and Atmospheric Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 36079

Court Services and Offender Supervision Agency for the District of Columbia

RULES

Standards of Ethical Conduct for Employees, 35957

Defense Department

NOTICES

Defense Transportation Regulation, Part IV, 36095

Delaware River Basin Commission

NOTICES

Meetings:

Delaware River Basin Commission, 36095

Education Department

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 36095–36097

Energy Department

See Energy Efficiency and Renewable Energy Office

See Federal Energy Regulatory Commission

NOTICES

Environmental Impact Statements; Availability, etc.:

Uranium Leasing Program, 36097–36100

Meetings:

Environmental Management Site-Specific Advisory Board, Northern New Mexico, 36101

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation, 36101–36102

Environmental Management Site-Specific Advisory Board, Portsmouth, 36100–36101

Energy Efficiency and Renewable Energy Office

NOTICES

Meetings:

Biomass Research and Development Technical Advisory Committee, 36102

State Energy Advisory Board, 36103

Environmental Protection Agency

PROPOSED RULES

EPA Responses to State and Tribal 2008 Lead Designation

Recommendations; Availability, 36042–36044

NOTICES

Certain New Chemicals; Receipt and Status Information, 36109–36120

Meetings:

Clean Air Scientific Advisory Committee Lead Review Panel, 36120–36121

Recent Postings to the Applicability Determination Index

Database System:

Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards under the Clean Air Act, 36121–36129

Underground Injection Control Program; Hazardous Waste

Injection Restrictions; Petition for Exemption:

Class I Hazardous Waste Injection; ExxonMobil Environmental Services Co., Pasadena, TX, 36129–36130

Farm Credit Administration

RULES

Federal Agricultural Mortgage Corporation Governance, etc.:

Risk-Based Capital Requirements; Effective Date, 35966

Federal Accounting Standards Advisory Board

NOTICES

Request for Nominations, 36130

Federal Aviation Administration

RULES

Amendment of Class E Airspace:

Bozeman, MT, 35967–35968

Cocoa, FL, 35966–35967

PROPOSED RULES

Airworthiness Directives:

Fokker Services B.V. Model F.27 Mark 050, 200, 300, 400, 500, 600, and 700 Airplanes; and Model F.28 Airplanes, 36011–36014

Amendment of Class C Airspace:

Palm Beach International Airport, FL, 36014–36017

Amendment of Class D and Class E Airspace and

Establishment of Class E Airspace:

Casper, WY, 36017–36019

Noise Certification Standards for Tiltrotors, 36001–36011

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Advanced Qualification Program, 36169

Aircraft Registration, 36167

Application for Certificate of Waiver or Authorization, 36170

Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulation, 36168

Development of Major Repair Data, 36172–36173

General Aviation Awards Program, 36168

License Requirements for Operation of a Launch Site, 36172

Malfunction or Defect Report, 36170–36171

Protection of Voluntarily Submitted Information, 36168–36169

Reduced Vertical Separation Minimum, 36171–36172

Reporting of Laser Illumination of Aircraft, 36169–36170

Rotorcraft External Load Operator Certificate Application, 36171

U.S. Registration of Aircraft in the Name of Owner Trustees for Non-U.S. Citizen Beneficiary, 36173

Federal Bureau of Investigation

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 36155–36156

Federal Deposit Insurance Corporation

RULES

Disclosure of Information; Privacy Act Regulations, 35963–35966

Federal Election Commission

PROPOSED RULES

Independent Expenditure Reporting, 36000–36001

Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations:

Rulemaking Petition, 36001

Federal Emergency Management Agency

PROPOSED RULES

Proposed Flood Elevation Determinations, 36044–36049

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 36139

Emergency Declarations:

Tennessee; Amendment No. 1, 36139–36140

Major Disaster and Related Determinations:

Minnesota, 36141

Mississippi, 36140–36141

South Dakota, 36140

Major Disaster Declarations:

Arkansas; Amendment No. 6, 36142–36143

Missouri; Amendment No. 6, 36141

North Dakota; Amendment No. 2, 36142

Tennessee; Amendment No. 3, 36142

Tennessee; Amendment No. 4, 36142

Federal Energy Regulatory Commission

NOTICES

Combined Filings, 36103–36109

Federal Highway Administration

NOTICES

Final Federal Agency Actions on Proposed Highway in California, 36173–36174

Federal Reserve System

RULES

Capital Adequacy Guidelines; Small Bank Holding Company Policy Statement:

Treatment of Subordinated Securities Issued to the United States Treasury, 35959–35963

Federal Retirement Thrift Investment Board

NOTICES

Meetings; Sunshine Act, 36130

Fish and Wildlife Service

RULES

Endangered and Threatened Wildlife and Plants:

Establishment of a Nonessential Experimental Population of Bull Trout in the Clackamas River Subbasin, Oregon, 35979–35995

PROPOSED RULES

Endangered and Threatened Wildlife and Plants:

90-Day Finding on Petition to List Utah Population of Gila Monster as Distinct Population Segment, 36049–36053

Designation of Critical Habitat for Sonoma County Distinct Population Segment of California Tiger Salamander, 36068–36071

Revised 90-Day Finding on a Petition to Reclassify the Utah Prairie Dog from Threatened to Endangered, 36053–36068

NOTICES

Environmental Assessments; Availability, etc.:

Bombay Hook National Wildlife Refuge, Kent County, DE, 36143–36145

Food and Drug Administration

PROPOSED RULES

Sterility Test Requirements for Biological Products, 36019–36027

NOTICES

Draft Guidances for Industry and Staff; Availability:

Classification of Products as Drugs and Devices and Additional Product Classification Issues, etc., 36133–36134

Foreign-Trade Zones Board

NOTICES

Application for Expansion of Manufacturing Authority:

Foreign-Trade Subzone 38A, BMW Manufacturing Co., LLC, 36079–36080

Application for Reorganization under the Alternative Site Framework:

Foreign-Trade Zone 37, Orange County, NY, 36080

Health and Human Services Department

See Children and Families Administration

See Food and Drug Administration

See Substance Abuse and Mental Health Services Administration

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 36130–36132

Homeland Security Department

See Coast Guard

See Federal Emergency Management Agency

NOTICES

Meetings:

National Infrastructure Advisory Council, 36137–36138

Interior Department

See Fish and Wildlife Service

See Land Management Bureau

See National Park Service

See Surface Mining Reclamation and Enforcement Office

NOTICES

Environmental Assessments; Availability, etc.:

Heber Sub-Area Irrigation to M and I Water Conversion, Wasatch County, UT, 36143

International Trade Administration**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:

Foreign-Trade Zone Application, 36080–36081

Antidumping and Countervailing Duty Orders; Revocations:

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil and Japan, 36081–36083

Antidumping Duty Administrative Reviews; Final Results and Final Rescissions in Part:

Hand Trucks and Certain Parts Thereof from People's Republic of China, 36083–36086

Antidumping Duty Administrative Reviews; Final Results:

Certain Circular Welded Non-Alloy Steel Pipe from Mexico, 36086–36089

Circular Welded Non-Alloy Steel Pipe from Republic of Korea, 36089–36091

Antidumping Duty Orders; Extensions of Time Limits for Final Results of First Administrative Reviews:

Small Diameter Graphite Electrodes from People's Republic of China, 36092

Antidumping Methodologies in Proceedings Involving Non-Market Economies:

Valuing the Factor of Production: Labor, 36092–36094

International Trade Commission**NOTICES**

Investigations:

Certain Equipment For Communications Networks, etc., 36154–36155

Justice Department

See Federal Bureau of Investigation

PROPOSED RULES

James Zadroga 9/11 Health and Compensation Act of 2010, 36027–36039

Labor Department

See Labor-Management Standards Office

See Mine Safety and Health Administration

Labor-Management Standards Office**PROPOSED RULES**

Labor-Management Reporting and Disclosure Act:

Interpretation of the Advice Exemption, 36178–36230

Land Management Bureau**NOTICES**

Call for Nominations:

2011 National Petroleum Reserve—Alaska Oil and Gas Lease Sale, 36145

Mine Safety and Health Administration**RULES**

Maintenance of Incombustible Content of Rock Dust in Underground Coal Mines, 35968–35978

National Foundation on the Arts and the Humanities**NOTICES**

Meetings:

Humanities Panel, 36156–36157

National Highway Traffic Safety Administration**NOTICES**

Meetings:

Federal Interagency Committee on Emergency Medical Services, 36174

National Oceanic and Atmospheric Administration**RULES**

Taking and Importing Marine Mammals:

Operation and Maintenance of Neptune Liquefied Natural Gas Facility off Massachusetts; Correction, 35995–35996

PROPOSED RULES

Atlantic Highly Migratory Species:

Vessel Monitoring Systems, 36071–36077

NOTICES

Draft Scientific Integrity Policy and Handbook; Availability, 36094–36095

National Park Service**NOTICES**

Inventory Completions:

Bureau of Land Management, Prineville District, Prineville, OR and University of Oregon Museum of Natural and Cultural History, Eugene, OR, 36147–36148

Bureau of Reclamation, Pacific Northwest Region, Boise, ID, 36153–36154

Florida Department of State/Division of Historical Resources, Tallahassee, FL, 36150–36151

Fowler Museum at UCLA, Los Angeles, CA, 36148–36149

Museum of Anthropology, University of Michigan, Ann Arbor, MI, 36151–36152

University of Oregon Museum of Natural and Cultural History, Eugene, OR, 36146–36147

Western Michigan University, Anthropology Department, Kalamazoo, MI; Correction, 36152–36153

Western Michigan University, Department of Anthropology, Kalamazoo, MI, 36145–36146, 36149–36150

Nuclear Regulatory Commission**RULES**

American Society of Mechanical Engineers Codes and New and Revised Code Cases, 36232–36279

NOTICES

Confirmatory Orders Modifying Licenses:

Alaska Industrial X-Ray, Inc., Anchorage, AK, 36157–36160

Meetings:

ACRS Subcommittee on Radiation Protection and Nuclear Materials, 36160

Meetings; Sunshine Act, 36161

Securities and Exchange Commission

NOTICES

Self-Regulatory Organizations; Proposed Rule Changes:
NASDAQ OMX PHLX LLC, 36161–36163

Small Business Administration

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 36163–36164

Disaster Declarations:

Kansas, 36165

Missouri; Amendment 4, 36165–36166

Missouri; Amendment 5, 36165

New Jersey, 36164, 36166

Tennessee; Amendment 4, 36165

Major Disaster Declarations:

Tennessee; Amendment 4, 36166

State Department

NOTICES

Culturally Significant Objects Imported for Exhibition
Determinations:

Gabriel von Max: Be-Tailed Cousins and Phantasms of
the Soul, 36166–36167

Meetings:

International Security Advisory Board, 36167

Waiver of Restriction on Assistance to the Central
Government of Afghanistan, 36167

Substance Abuse and Mental Health Services Administration

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 36135–36137

Surface Mining Reclamation and Enforcement Office

PROPOSED RULES

Colorado Regulatory Program, 36039–36040

Wyoming Regulatory Program, 36040–36042

Transportation Department

See Federal Aviation Administration

See Federal Highway Administration

See National Highway Traffic Safety Administration

Treasury Department

See United States Mint

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals, 36174–36176

United States Mint

NOTICES

Pricing for National September 11 Memorial and Museum
Commemorative Medal, 36176

Veterans Affairs Department

NOTICES

Agency Information Collection Activities; Proposals,
Submissions, and Approvals:

Fully Developed Claims—Applications for Compensation,
Pension, DIC, Death Pension, and/or Accrued
Benefits, 36176

Separate Parts In This Issue

Part II

Labor Department, Labor–Management Standards Office,
36178–36230

Part III

Nuclear Regulatory Commission, 36232–36279

Reader Aids

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

To subscribe to the Federal Register Table of Contents

LISTSERV electronic mailing list, go to [http://](http://listserv.access.gpo.gov)

listserv.access.gpo.gov and select Online mailing list

archives, FEDREGTOC-L, Join or leave the list (or change
settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR	
Ch. LXX	35957
7 CFR	
932	35957
Proposed Rules:	
958	35997
10 CFR	
50	36232
11 CFR	
Proposed Rules:	
109	36000
114	36001
12 CFR	
225	35959
309	35963
310	35963
651	35966
652	35966
14 CFR	
71 (2 documents)	35966, 35967
Proposed Rules:	
21	36001
36	36001
39	36011
71 (2 documents)	36014, 36017
21 CFR	
Proposed Rules:	
600	36019
610	36019
680	36019
26 CFR	
Proposed Rules:	
405	36178
406	36178
28 CFR	
Proposed Rules:	
104	36027
30 CFR	
75	35968
Proposed Rules:	
906	36039
950	36040
33 CFR	
117 (2 documents)	35978
40 CFR	
Proposed Rules:	
81	36042
44 CFR	
Proposed Rules:	
67	36044
50 CFR	
17	35979
217	35995
Proposed Rules:	
17 (3 documents)	36049, 36053, 36068
635	36071

Rules and Regulations

Federal Register

Vol. 76, No. 119

Tuesday, June 21, 2011

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

5 CFR Chapter LXX

[CSOSA-0009-P]

RIN 3209-AA15 and 3225-AA07

Supplemental Standards of Ethical Conduct for Employees of the Court Services and Offender Supervision Agency for the District of Columbia

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Final rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia (CSOSA or Agency), with the concurrence of the Office of Government Ethics (OGE), is adopting as final, without change, the interim CSOSA rule that supplements the executive-branch-wide Standards of Ethical Conduct (Standards) issued by OGE, and requires employees of CSOSA and employees of the District of Columbia Pretrial Services Agency (PSA), an independent entity within CSOSA, to obtain approval before engaging in outside employment.

DATES: This final rule is effective June 21, 2011.

FOR FURTHER INFORMATION CONTACT: Theresa A. Rowell, Assistant General Counsel, Office of General Counsel, telephone: (202) 220-5364; e-mail: theresa.rowell@csosa.gov.

SUPPLEMENTARY INFORMATION: CSOSA published, with OGE concurrence, an interim rule in 76 FR 22293, on April 21, 2011, requiring employees of CSOSA and PSA to obtain prior written approval before engaging in outside employment. No comments were received. CSOSA has determined, with OGE concurrence, to adopt the interim rule as final without any change. The

interim rule being adopted as final provides that employees of CSOSA and PSA must obtain prior written approval before engaging in outside employment. The rule defines outside employment and sets out the procedure for seeking approval.

For a detailed section analysis of this final rule, see the preamble of the interim rule as published in 76 FR 22293.

Regulatory Flexibility Act

CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. chapter 35, does not apply because this rulemaking does not contain information collection requirements subject to the approval of the Office of Management and Budget.

Congressional Review Act

CSOSA has determined that this rule is not a rule as defined in 5 U.S.C. 804, and thus, does not require review by Congress.

List of Subjects in 5 CFR Part 8001

Conflict of interests, Government employees.

Authority and Issuance: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.801, 2635.802, 2635.803.

Accordingly, the Court Services and Offender Supervision Agency for the District of Columbia, with the concurrence of the Office of Government Ethics, is adopting the interim rule adding 5 CFR chapter LXX, consisting of part 8001, which was published in 76 FR 22293 on April 21, 2011, as a final rule without change.

Dated: May 24, 2011.

Adrienne Poteat,
Deputy Director, Court Services and Offender Supervision Agency.

Approved: May 24, 2011.

Robert I. Cusick,
Director, Office of Government Ethics.

[FR Doc. 2011-15362 Filed 6-20-11; 8:45 am]

BILLING CODE 3129-01-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS-FV-10-0115; FV11-932-1 FIR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that decreases the assessment rate established for the California Olive Committee (Committee) for 2011 and subsequent fiscal years from \$44.72 to \$16.61 per ton of olives handled. The Committee locally administers the marketing order which regulates the handling of olives grown in California. Assessments upon olive handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective June 22, 2011.

FOR FURTHER INFORMATION CONTACT: Jerry L. Simmons, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Jerry.Simmons@ams.usda.gov or Kurt.Kimmel@ams.usda.gov.

Small businesses may request information on complying with this and other marketing order and/or agreement regulations by viewing a guide at the following Web site: <http://>

www.ams.usda.gov/MarketingOrdersSmallBusinessGuide/; or by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Laurel.May@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

The handling of olives grown in California is regulated by 7 CFR part 932. California olive handlers are subject to assessments. Prior to this change handlers were assessed \$44.72 per ton of olives handled.

The Committee met on December 15, 2010, and unanimously recommended an assessment rate of \$16.61 per ton of olives. The assessment rate of \$16.61 is \$28.11 per ton lower than the rate currently in effect. The Committee recommended the lower assessment rate because of a substantial increase in assessable olives for the 2011 fiscal year.

The assessment rate established in this rule will be applicable to all assessable olives beginning on January 1, 2011, and continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information. Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate.

In an interim rule published in the **Federal Register** on March 4, 2011, and effective on March 5, 2011 (76 FR 11937, Doc. No. AMS-FV-10-0115, FV11-932-1 IR), §§ 932.230 was amended by decreasing the assessment rate from \$44.72 to \$16.61 per ton of olives handled.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural

Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

There are approximately 1,000 producers of California olives in the production area and 2 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000.

Based upon information from the industry and the California Agricultural Statistics Service (CASS), the average grower price for 2010 was approximately \$811 per ton and total grower production was around 165,000 tons. Based on production, producer prices, and the total number of California olive producers, the average annual producer revenue is less than \$750,000. Thus, the majority of olive producers may be classified as small entities. Both of the handlers may be classified as large entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2011 and subsequent fiscal years from \$44.72 to \$16.61 per ton of olives. The Committee unanimously recommended 2011 expenditures of \$2,203,909 and an assessment rate of \$16.61 per ton. The recommended assessment rate of \$16.61 is \$28.11 lower than the 2010 rate. Income generated from the \$16.61 per ton assessment rate should be adequate to meet this year's expenses when combined with funds from the authorized reserve and interest income.

The major expenditures recommended by the Committee for the 2011 fiscal year include \$1,093,009 for Research Programs, \$700,000 for Marketing Programs, \$335,900 for General Administration, and \$75,000 for Inspection Equipment Development. Budgeted expenses for these items in 2010 were \$300,000, \$255,000, \$324,923, and \$50,000, respectively.

The Committee recommended the lower assessment rate because of a substantial increase in assessable olives

for the 2011 fiscal year. The fiscal year 2011 olives as reported by CASS total 164,984 tons, as compared to 23,033 tons reported for the 2010 fiscal year.

The Committee reviewed and unanimously recommended 2011 expenditures of \$2,203,909, which included increases in administrative expenses, marketing programs, equipment development and research programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Executive Subcommittee, Marketing Subcommittee, Inspection Subcommittee, and the Research Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various projects to the olive industry. The assessment rate of \$16.61 per ton of assessable olives was derived by considering anticipated expenses, the volume of assessable olives, and additional pertinent factors.

A review of historical information and preliminary information indicates that grower price could range between approximately \$811 per ton and \$1,105 per ton. Therefore, the estimated assessment revenue for the 2011 fiscal year as a percentage of total grower revenue could range between 1.5 and 2 percent.

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

This action imposes no additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

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

Comments on the interim rule were required to be received on or before May 3, 2011. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: <http://www.regulations.gov/#!documentDetail;D=AMS-FV-10-0115-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (76 FR 11937, March 4, 2011) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 932

Olives, Marketing agreements, Reporting and recordkeeping requirements.

PART 932—[AMENDED]

■ Accordingly, the interim rule that amended 7 CFR part 932 and that was published at 76 FR 11937 on March 4, 2011, is adopted as a final rule, without change.

Dated: June 15, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011-15446 Filed 6-20-11; 8:45 am]

BILLING CODE 3410-02-P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-1356]

Capital Adequacy Guidelines; Small Bank Holding Company Policy Statement: Treatment of Subordinated Securities Issued to the United States Treasury Under the Emergency Economic Stabilization Act of 2008 and the Small Business Jobs Act of 2010

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: The Board is adopting a final rule that allows bank holding companies that have made a valid election to be taxed under Subchapter S of Chapter 1 of the U.S. Internal Revenue Code (S-Corp BHCs) and bank holding companies organized in mutual form (Mutual BHCs) to include the full amount of any subordinated debt securities issued to the U.S. Department of the Treasury (Treasury) under the capital purchase program (CPP), in tier 1 capital for purposes of the Board's risk-based and leverage capital

guidelines for bank holding companies, provided that the Subordinated Securities will count toward the limit on the amount of other restricted core capital elements includable in tier 1 capital; and allows bank holding companies that are subject to the Board's Small Bank Holding Company Policy Statement (small bank holding companies) and that are S-Corp BHCs or Mutual BHCs to exclude the CPP Subordinated Securities from treatment as debt for purposes of the debt-to-equity standard under the Small Bank Holding Company Policy Statement (Policy Statement). The Board is also adopting, and requesting comment on, an interim final rule that allows small bank holding companies that are S-Corps or Mutual BHCs to exclude from treatment as debt for purposes of the debt-to-equity standard under the Policy Statement subordinated debt securities issued to the Treasury through the Small Business Lending Fund established under the Small Business Jobs Act of 2010.

DATES: The final rule will become effective on June 21, 2011. Comments on allowing S-Corp BHCs and Mutual BHCs that issue SBLF Subordinated Securities to the Treasury to exclude the securities from the definition of debt under the Policy Statement are due by July 30, 2011.

FOR FURTHER INFORMATION CONTACT:

Anna Lee Hewko, (202) 530-6260, Assistant Director, Capital and Regulatory Policy, or Brendan G. Burke, (202) Senior Supervisory Financial Analyst, Division of Banking Supervision and Regulation; April C. Snyder, Counsel, (202) 452-3099, or Benjamin W. McDonough, Counsel, (202) 452-2036, Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave., NW., Washington, DC 20551. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2009, the Board issued an interim final rule (CPP interim rule) (74 FR 26077) to allow bank holding companies that have made a valid election to be taxed under Subchapter S of Chapter 1 of the U.S. Internal Revenue Code (S-Corp BHCs) and bank holding companies organized in mutual form (Mutual BHCs) to include the full amount of any subordinated debt securities issued to the Treasury under the capital purchase program (CPP Subordinated Securities) established by Treasury under the Economic

Stabilization Act of 2008 (EESA)¹ in tier 1 capital for purposes of the Board's risk-based and leverage capital guidelines for bank holding companies (Capital Guidelines),² provided that the Subordinated Securities would count toward the limit on the amount of other restricted core capital elements includable in tier 1 capital. The CPP interim rule also permitted bank holding companies that are subject to the Board's Small Bank Holding Company Policy Statement (Policy Statement)³ and that are S-Corps or Mutual BHCs, to exclude the CPP Subordinated Securities from treatment as debt for purposes of the debt-to-equity standard under the Policy Statement.

The Board is now adopting the CPP interim final rule as a final rule in substantially the same form, as discussed below. In addition, for the reasons explained below, the Board is adopting as an interim final rule a provision that would allow bank holding companies that are subject to the Board's Policy Statement and that are S-Corp BHCs or Mutual BHCs to exclude subordinated debt securities issued to the Treasury through the Small Business Lending Fund established under the Small Business Jobs Act of 2010 (SBLF Subordinated Securities) from debt for purposes of the debt-to-equity standard under the Policy Statement.

Capital Guidelines

Under the Troubled Asset Relief Program (TARP) established in the Emergency Economic Stabilization Act of 2008 (EESA), Division A of Pub. L. No. 110-343, 122 Stat. 3765 (2008), Treasury provided capital to eligible banks, bank holding companies and savings associations (collectively, banking organizations), as well as certain other financial institutions (CPP).⁴ S-Corp BHCs generally could not participate in the CPP through the issuance of Senior Perpetual Preferred Stock because, under the Internal Revenue Code, S-Corp BHCs may not issue more than one class of equity security. Bank holding companies organized in mutual form also cannot issue Senior Perpetual Preferred Stock

¹ Public Law 110-343, 122 Stat. 3765 (2008).

² 12 CFR part 225, Appendices A and D.

³ 12 CFR part 225, Appendix C.

⁴ Through the CPP, Treasury invested in newly issued senior perpetual preferred stock of banking organizations (Senior Perpetual Preferred Stock) that are not S-Corps or organized in mutual form. On June 1, 2009, the Board published a final rule on the capital treatment of the Senior Perpetual Preferred Stock. See 74 FR 26081 (June 1, 2009).

because of their mutual ownership structure.

Under the CPP, Treasury purchased the CPP Subordinated Securities, which rank senior to common stock but are subordinated to the claims of depositors and other creditors unless such other claims are explicitly made *pari passu* or subordinated to the Subordinated Securities.⁵ These terms were designed to facilitate S-Corp and Mutual BHC participation in the CPP in a manner that is as economically comparable as possible, consistent with the legal structure of S-Corp and Mutual BHCs, the Board's capital adequacy guidelines, and the Internal Revenue Code, to institutions that issued Senior Perpetual Preferred Stock to the Treasury under the CPP.⁶

As with other securities issued to Treasury under the CPP, and as described in further detail in the interim final rule, the CPP Subordinated Securities included certain features designed to make them attractive to a wide array of generally sound S-Corp and mutual banking organizations and to encourage such companies to replace such securities with private capital once the financial markets return to more normal conditions. In particular, the CPP Subordinated Securities bear an interest rate that increases substantially five years after issuance.

Under the Board's current Capital Guidelines, the CPP Subordinated Securities generally would be ineligible for tier 1 capital treatment because they are subordinated debt, but would be eligible for inclusion in tier 2 capital.⁷ However, the Subordinated Securities were purposefully structured to have features that are very close to those of the subordinated notes underlying trust preferred securities that qualify for tier 1 capital as a restricted core capital element for bank holding companies (qualifying trust preferred securities).⁸

⁵ This final rule accords the same capital treatment to Subordinated Securities issued by Mutual BHCs as those issued by S-Corp BHCs, and accordingly, any reference to a S-Corp BHC in the notice shall also be deemed to include a Mutual BHC unless the context otherwise requires.

⁶ The interest payments on the CPP Subordinated Securities are tax deductible for shareholders of the issuing S-Corp and therefore this interest rate is economically comparable (assuming a 35 percent marginal tax rate) to the dividend payments on the Senior Preferred Stock, which are not tax deductible.

⁷ See 12 CFR part 225, Appendix A, sections II.A.2. and II.A.2.d.

⁸ For example, like such junior subordinated notes, the CPP Subordinated Securities were deeply subordinated and junior to the claims of depositors and other creditors of the issuing bank holding company. Furthermore, interest payable on the CPP Subordinated Securities could be deferred by the issuing S-Corp BHC for up to 20 quarters without creating an event of default and the CPP

Moreover, the CPP Subordinated Securities could not be redeemed without the approval of the Federal Reserve, to ensure redemptions are consistent with safety and soundness.⁹ Additionally, the CPP Subordinated Securities were issued to Treasury as part of a nationwide program to increase capital available to eligible banking organizations that are in generally sound financial condition in order to promote stability in the financial markets and the banking industry as a whole.

For these reasons and in order to support the participation of S-Corp BHCs in the Capital Purchase Program, promote the stability of banking organizations and the financial system, and help banking organizations meet the credit needs of creditworthy customers, the Board adopted the CPP interim rule to permit S-Corp BHCs that issued CPP Subordinated Securities to the Treasury to include the full amount of such securities in tier 1 capital for purposes of the Board's Capital Guidelines, subject to certain limitations.¹⁰

The Board received two comments on the CPP interim rule. Both comments generally were in favor of the Board's action. One commenter suggested that the Board extend the capital treatment provided by the CPP interim rule to instruments with similar terms issued to private entities. Another commenter expressed support for the CPP interim rule generally and asked that the Board clarify in the final rule that the capital treatment of the CPP interim rule would apply to all CPP Subordinated Securities issued, whether before or after the publication of the CPP interim rule.

As discussed in the CPP interim rule, the Board, as a matter of prudential policy and practice, generally has not allowed subordinated debt to be included in tier 1 capital, given the

Subordinated Securities were issued with a maturity of 30 years, which is the same minimum term required for such junior subordinated notes. See 12 CFR part 225, Appendix A, section II.A.1.c.iv.

⁹ See 12 CFR part 225, Appendix A, section II.A.1.c.ii.(2).

¹⁰ As explained in the interim final rule, an S-Corp BHC issuing CPP Subordinated Securities must take into account the amount of CPP Subordinated Securities in determining the amount of *other* restricted core capital elements the company could include in its tier 1 capital. Thus, for example, if the amount of Subordinated Securities issued by an S-Corp BHC equaled or exceeded 25 percent of the company's tier 1 capital elements, the company could not include any other currently outstanding or future restricted core capital elements in tier 1 capital, and any such restricted core capital elements in the company's tier 1 capital elements could only be included in tier 2 capital. See 74 FR 26077, 26079 (June 1, 2009).

contractual obligations they place on the issuing banking organization and consequent limited ability to absorb losses. The Board remains concerned that instruments with debt or debt-like features have limited ability to absorb losses. However, as discussed above and in the CPP interim rule, issuance of the CPP Subordinated Securities to Treasury in connection with TARP was consistent with a strong public policy objective, which was to increase the capital available to banking organizations generally in a stressed economic environment and thereby promote stability in the financial markets and the banking industry as a whole, as well as facilitate the ability of banking organizations to meet the needs of creditworthy households, businesses, and other customers. In addition, as discussed above and in the CPP interim rule, the terms and public policy considerations related to the CPP Subordinated Securities mitigated supervisory concerns. These facts and circumstances, viewed in light of the unique, temporary, and extraordinary nature of the CPP, countervailed in many respects the Board's concerns with regard to the subordinated debt nature of the securities. For these reasons and others related to subsequent legislation, as described below, the Board has not extended the capital treatment provided under the CPP interim rule to subordinated debt other than the CPP Subordinated Securities.

Since the issuance of the CPP interim rule, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (DFA).¹¹ Under section 171 of the DFA, the Board must establish minimum risk-based and capital leverage requirements for bank holding companies that are no less than the generally applicable minimum risk-based and leverage capital requirements for insured depository institutions. Under current generally applicable capital requirements for insured depository institutions, subordinated debt cannot be included in the tier 1 capital of insured depository institutions and therefore as a general matter, could not be included in the tier 1 capital of bank holding companies. However, the DFA exempted from the requirements of section 171 debt instruments issued by banks and bank holding companies pursuant to EESA to the Treasury prior to October 4, 2010. Therefore, section of the DFA generally does not affect the treatment in the CPP interim rule of CPP Subordinated Debt Securities, although other subordinated

¹¹ Public Law 111-203, 124 Stat. 1376 (2010).

debt securities are subject to section 171 of the DFA.

For the reasons above, the Board has adopted the CPP interim rule as a final rule, clarifying that the provisions apply to all CPP Subordinated Securities issued to Treasury prior to October 4, 2010, in accordance with the DFA.

The Board expects S-Corp BHCs that issue CPP Subordinated Securities, like all other bank holding companies, to hold capital commensurate with the level and nature of the risks to which they are exposed. In addition, the Board expects banking organizations that issue CPP Subordinated Securities to appropriately incorporate the obligations associated with the CPP Subordinated Securities into the organization's liquidity and capital funding plans.

Small Bank Holding Company Policy Statement

CPP Subordinated Securities

In the CPP interim rule, in order to maintain competitive equality between large and small bank holding companies, the Board also amended the Policy Statement to allow bank holding companies that are subject to the Policy Statement and that are S-Corp BHCs to exclude the Subordinated Securities from debt for purposes of the debt-to-equity standard under Policy Statement.¹² Generally, bank holding companies with less than \$500 million in consolidated assets (small bank holding companies) are not subject to the Capital Guidelines and instead are subject to the Policy Statement.

The Policy Statement limits the ability of a small bank holding company to pay dividends if its debt-to-equity ratio exceeds certain limits. However, the Policy Statement provides that small bank holding companies may exclude from debt an amount of subordinated debt associated with qualifying trust preferred securities up to 25 percent of the bank holding company's equity (as defined in the Policy Statement), less goodwill on the parent company's balance sheet, in determining compliance with the requirements of certain provisions of the Policy Statement.¹³ The practical effect of excluding the CPP Subordinated Securities from debt for purposes of the Policy Statement is to allow issuance of CPP Subordinated Securities by small bank holding companies without exceeding the debt-to-equity ratio standard that would disallow the payment of dividends by such small

bank holding companies. In turn, this allows small bank holding companies that issue CPP Subordinated Securities to downstream Treasury's investment in the form of the CPP Subordinated Securities as additional common stock to subsidiary depository institutions (that counts as tier 1 capital of the depository institutions) and to pay dividends to the small bank holding company's shareholders to the extent appropriate and permitted by the Federal Reserve.

Because the CPP Subordinated Securities and the junior subordinated notes underlying qualifying trust preferred securities have very similar features, and to facilitate the participation of small bank holding companies in the Capital Purchase Program, the Board adopted the CPP interim rule to allow small bank holding companies that are S-Corp BHCs to exclude the CPP Subordinated Securities from the definition of debt for purposes of the debt-to-equity ratio standard under the Policy Statement. The factors and considerations discussed above with respect to the Board's treatment of the CPP Subordinated Securities under its Capital Adequacy Guidelines also apply equally to the Board's decision to modify the Policy Statement in this manner.

Section 171 of the DFA, by its terms, does not apply to any small bank holding company that is subject to the Policy Statement as in effect on May 19, 2010. The CPP Subordinated Securities may be excluded from the definition of debt under the Policy Statement as in effect on May 19, 2010. Therefore, S-Corp BHCs and Mutual BHCs subject to the Policy Statement as in effect on May 19, 2010, are not subject to the requirements of section 171 and may under the final rule continue to exclude the CPP Subordinated Securities from debt.

SBLF Subordinated Securities

Under the Small Business Jobs Act of 2010 (SBJA),¹⁴ a \$30 billion Small Business Lending Fund (SBLF) was established to facilitate lending to small business by banking organizations with less than \$10 billion in consolidated assets. The increased lending would be enabled through capital investments by Treasury in these banking organizations. The resulting rise in availability of credit to small businesses is intended to counteract the effects of the financial crisis on lending to small businesses

and encourage increased hiring by small businesses.

Treasury has established term sheets for the issuance of subordinated securities by S-Corp BHCs and Mutual BHCs that are eligible for the SBLF program, with terms and structure similar to the CPP Subordinated Securities. The SBLF Subordinated Securities, like the CPP Subordinated Securities, are deeply subordinated, cannot be redeemed by a bank holding company issuer without the permission of the Federal Reserve, and cannot provide for accelerated interest except in liquidation or bankruptcy.¹⁵ Furthermore, the SBLF Subordinated Securities, like the CPP Subordinated Securities, are issued to Treasury as part of a nationwide program to provide capital to eligible banking organizations that are in generally sound financial condition in order to increase the capital available for lending to small businesses, thereby mitigating the ongoing effects of the financial crisis on small businesses and promoting financial stability.

Based on these facts and circumstances, the Board has concluded that the SBLF Subordinated Securities are in terms and substance substantially equivalent to the CPP Subordinated Securities and may be excluded from debt under the Policy Statement as in effect on May 19, 2010, on the same basis and for the same reasons as described above. The Board therefore has approved an interim final rule for public comment that allows S-Corp and mutual bank holding companies that issue SBLF Subordinated Securities to the Treasury to exclude the securities from the definition of debt under the Policy Statement.

The Board requests comment on allowing S-Corp BHCs and Mutual BHCs to exclude the SBLF Subordinated Securities from debt under the Policy Statement.

Administrative Procedure Act

As discussed above and in the interim final rule, the Board found good cause for issuing the CPP interim rule and

¹⁵ The SBLF Subordinated Securities, like the CPP Securities, bear an interest step-up feature. This feature is designed in accordance with the SBJA. The SBLF Subordinated Securities, unlike the CPP Subordinated Securities that had a maturity of 30 years, have a stated maturity of 10 years. However, as with the CPP Subordinated Securities, for public policy reasons, the step-up feature is designed to encourage the issuer to replace the government investment with private capital at a point in time prior to the stated maturity. The term sheets for SBLF Subordinated Securities are available on Treasury's Web site at <http://www.treasury.gov/resource-center/sb-programs/Pages/Overview-for-S-Corporation-Banks-and-Mutual-Institutions.aspx>.

¹² 12 CFR part 225, Appendix C.

¹³ 12 CFR part 225, Appendix C, section 2, n. 3.

¹⁴ Public Law 111-240, 124 Stat. 2504 (2010).

making it effective on June 1, 2009, without opportunity to comment before the effective date. The Board has considered comments that were submitted after the publication of the final rule and for the reasons described above, adopted the final rule for CPP Subordinated Securities substantially in the form of the interim final rule.

Pursuant to sections 553(b) and (d) of the Administrative Procedure Act (5 U.S.C. §§ 553(b) and (d)), the Board also finds that there is good cause for issuing this interim final rule with respect to the SBLF Securities and making the rule effective on June 21, 2011, and that it is impracticable, unnecessary, or contrary to the public interest to issue a notice of proposed rulemaking. The Board is requesting public comment on the interim final rule.

As explained, the SBLF Subordinated Securities are substantially equivalent to the CPP Subordinated Securities in terms and substance. Furthermore, the Board has adopted the interim final rule in light of the important policy considerations of the SBLF program and to help address the continued effects of the financial crisis and recession on small businesses. The rule will allow S-Corp BHCs that are subject to the Policy Statement to exclude the SBLF Subordinated Securities from debt for purposes of the debt-to-equity ratio standard of the Policy Statement. This will help counteract the effects of the recent financial crisis on lending to small businesses and promote stability in the banking system as well as economic growth through increased availability of credit to small businesses.

The Board believes it is important to provide S-Corp BHCs that are subject to the Policy Statement immediately with guidance concerning the capital treatment of the SBLF Subordinated Securities so that they may make appropriate judgments concerning the extent of their participation in the SBLF program and to provide S-Corp BHCs with immediate certainty concerning the treatment of SBLF Subordinated Securities under the Policy Statement.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available for public comment an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking.¹⁶ Under regulations issued by the Small Business Administration,¹⁷ a small entity includes a bank holding company with assets of \$175 million or

less (a small bank holding company). As of December 31, 2010, there were approximately 4,493 small bank holding companies.

The purpose of the final rule for CPP Subordinated Securities, like the interim final rule, is to facilitate participation in the CPP for S-Corp and Mutual BHCs, increase capital available to banking organizations, and promote stability in the financial markets and banking industry. Similarly, the purpose of the interim final rule for SBLF Subordinated Securities is to facilitate participation by S-Corp BHCs and Mutual BHCs in the SBLF program, thereby making more capital available for small business lending and alleviate the effects of the financial crisis and economic downturn on lending to small businesses.

As a general matter, the Capital Guidelines apply only to a bank holding company that has consolidated assets of \$500 million or more. Therefore, the final rule, like the CPP interim rule, would not affect small bank holding companies. Furthermore, the final rule has no new effect on small bank holding companies that were applicants to the CPP and excluded CPP Subordinated Securities from the definition of debt under the Policy Statement pursuant to the CPP interim rule, which reduced burden and benefited small bank holding companies, as explained in the CPP interim rule. Therefore, the Board believes adoption of the final rule for CPP Subordinated Securities will not result in a significant economic impact on small bank holding companies.

The changes to the Policy Statement under the interim final rule for SBLF Subordinated Securities will also reduce burden and benefit small bank holding companies. By allowing them to exclude the SBLF Subordinated Securities from treatment as debt for purposes of the debt-to-equity standard under the Policy Statement, issuance of the subordinated securities to Treasury would have a neutral effect on the ability of the issuing small bank holding company to issue dividends or make acquisitions with regard to its debt-to-equity ratio. Furthermore, the interim final rule does not appear to duplicate, overlap, or conflict with any other Federal rules. Therefore, the Board believes that the interim final rule will not result in a significant economic impact on a substantial number of small entities. Nonetheless, the Board seeks comment on whether the interim final rule would impose undue burdens on, or have unintended consequences for, small banking organizations, and whether there are ways such potential burdens or consequences could be minimized in a

manner consistent with the purpose of the interim final rule.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), the Board has reviewed the final rule and interim final rule to assess any information collections. There are no collections of information as defined by the Paperwork Reduction Act in the final rule or interim final rule.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board invites comment on how to make the interim final rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could the rule be more clearly stated?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What else could we do to make the regulation easier to understand?

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

Accordingly, the interim rule amending 12 CFR part 225 which was published at 74 FR 26077 on June 1, 2009, is adopted as a final rule with the following changes:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

- 1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906,

¹⁶ See 5 U.S.C. 603(a).

¹⁷ See 13 CFR 121.201.

3907, 3909, and 5371; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 2. Appendix A to part 225 is amended by revising section II.A.1.a.iv., paragraph (5), to read as follows:

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *
A. * * *
1. * * *
a. * * *
iv. * * *

(5) Subordinated debentures issued prior to October 4, 2010, to the Treasury under the TARP (TARP Subordinated Securities) established by the EESA by a bank holding company that has made a valid election to be taxed under Subchapter S of Chapter 1 of the U.S. Internal Revenue Code (S-Corp BHC) or by a bank holding company organized in mutual form (Mutual BHC).

* * * * *

■ 3. In appendix C to part 225, revise paragraph 3 in footnote 3 to section 2 to read as follows:

Appendix C to Part 225—Small Bank Holding Company Policy Statement

* * * * *

2. Ongoing Requirements

3 * * *

In addition, notwithstanding any other provision of this policy statement and for purposes of compliance with paragraphs 2.C., 3.A., 4.A.i, and 4.B.i. of this policy statement, both a bank holding company that is organized in mutual form and a bank holding company that has made a valid election to be taxed under Subchapter S of Chapter 1 of the U.S. Internal Revenue Code may exclude from debt subordinated debentures issued to the United States Department of the Treasury under (i) the Troubled Asset Relief Program established by the Emergency Economic Stabilization Act of 2008, Division A of Public Law 110–343, 122 Stat. 3765 (2008), and (ii) the Small Business Lending Fund established by the Small Business Jobs Act of 2010, Title IV of Public Law 111–240, 124 Stat. 2504 (2010).

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 13, 2011.

Jennifer J. Johnson,
Secretary of the Board.

[FR Doc. 2011–14983 Filed 6–20–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 309 and 310

RIN 3064–AD83

Disclosure of Information; Privacy Act Regulations; Notice and Amendments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim rule with request for comments.

SUMMARY: The Dodd-Frank Wall Street Reform and Consumer Protection Act (Act), abolished the Office of Thrift Supervision (OTS) and redistributed, as of July 21, 2011, the statutorily prescribed transfer date (Transfer Date), the functions and regulations of the OTS relating to savings and loan holding companies, Federal savings associations, and State savings associations to the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the FDIC, respectively. The Board of Directors has determined that, effective on the Transfer Date, the OTS Freedom of Information Act (FOIA) and Privacy Act (PA) regulations will not be enforced by the FDIC and that, instead, all FOIA and PA issues will be addressed under the FDIC's regulations involving disclosure of information and the PA, as amended. In taking this action the FDIC's goal is to avoid potential confusion and uncertainty that may arise regarding information concerning State savings associations after the Transfer Date.

DATES: The effective date of the Interim Rule is July 21, 2011. Written comments must be received by the FDIC no later than August 22, 2011.

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

Agency Web Site: <http://www.fdic.gov/regulations/laws/federal>. Follow instructions for submitting comments on the Agency Web Site.

E-mail: Comments@FDIC.gov. Include RIN 3064–AD83 in the subject line of the message.

Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).

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

Public Inspection: All comments received will be posted without change

to <http://www.fdic.gov/regulations/laws/federal> including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at 1–(877) 275–3342 or 1–(703) 562–2200.

FOR FURTHER INFORMATION CONTACT: A. Ann Johnson, Counsel, Legal Division, (202) 898–3573 or aaajohnson@fdic.gov; Rodney D. Ray, Counsel, Legal Division, (202) 898–3556 or rday@fdic.gov; or Martin P. Thompson, Senior Review Examiner, Division of Risk Management Supervision, (202) 898–6767 or marthompson@fdic.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Act, signed into law on July 21, 2010, provides for a substantial reorganization of the regulation of savings associations and their holding companies. Beginning July 21, 2011, the Transfer Date established in Dodd-Frank, functions formerly performed by the OTS will be divided among the FRB, OCC, and FDIC. Section 316(b) of the Act provides that all orders, resolutions, determinations, and regulations issued, made, prescribed, or allowed to become effective by the OTS that were in effect on the day before the Transfer Date continue in effect and are enforceable by the appropriate successor Federal banking agency until modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law. Section 323(b) also provides for the transfer on the Transfer Date of OTS property, including books, accounts, records, reports, files, memoranda, paper, reports of examination, work papers, and correspondence relating to such reports, to the respective agencies, that were used by the OTS on the day before the Transfer Date to support OTS functions.

Section 316(c) of the Act further provides for the identification of OTS regulations relating to the supervision of State savings associations to be transferred to the FDIC. The FDIC does not intend to continue or enforce existing OTS regulations regarding the Freedom of Information Act or Privacy Act.

II. The Interim Rule

The OTS regulations governing Freedom of Information Act and Privacy Act issues are contained in 12 CFR parts 503 and 505. Because the OTS, unlike the FDIC, is a component part of the Department of the Treasury (Treasury), the OTS rules supplement Treasury's

FOIA and PA regulations. 12 CFR parts 309 and 310 of the FDIC's regulations also implement the relevant provisions of the FOIA and PA, but do not rely on Treasury's regulations. Both the OTS and FDIC rules describe the agency processes and procedures regarding FOIA and PA issues.

The Act provides for a 90 day "wind down" period for the OTS beginning on the Transfer date and it will cease operating as a Federal banking agency on July 21, 2011. Because the OTS' functions and property relating to State savings associations will transfer to the FDIC on the Transfer Date, the FDIC believes that the existence of two sets of regulations addressing the same subject areas would lead to confusion concerning which rules and procedures govern FOIA and PA issues applicable to State savings associations. Therefore, the FDIC is providing the public with notice that the FDIC intends to apply the FDIC's existing FOIA and PA regulations to all records or other matters transferred from the OTS to the FDIC, as well as FDIC matters, as of the Transfer Date. In addition, the FDIC is making certain technical amendments to the FDIC's existing regulations to correct addresses and other matters that have changed since the FDIC's rules involving disclosure of information and the PA were last revised. Finally, the FDIC is substituting the Bureau of Consumer Financial Protection for the OTS in section 309.06(b)(3) as a Federal financial institution supervisory agency, for purposes of section 309.6, to whom exempt records may be disclosed.

III. Section-By-Section Description of the Interim Rule

The Interim Rule revises parts 309 and 310 of the FDIC's regulations as follows:

Part 309—Disclosure of Information

Section 309.1 Purpose and scope. Section 309.1 is revised to indicate that the FDIC's disclosure regulations apply to the disclosure of information transferred to the FDIC from the OTS pursuant to sections 312 and 323 of the Act.

Section 309.4 Publicly available records. Section 309.4(b) is revised to change the address of the FDIC's Public Information Center.

Section 309.5 Procedures for requesting records. Section 309.5(b)(ii) is revised to change the facsimile number for the FDIC FOIA/PA Group. Section 309.5(b)(iii), (f)(4)(ii), and (h)(1) are revised to make changes to the FDIC FOIA/PA Group address.

Section 309.6 Disclosure of exempt records. Section 309.6(b)(3) is revised to

substitute the Bureau of Consumer Financial Protection and the Financial Stability Oversight Council for the OTS and section 309.6(b)(5) to replace the reference to "bank" with "depository institution" and make other non-substantive conforming changes.

Part 310—Privacy Act Regulations

Section 310.1 Purpose and scope. Section 310.1 is revised to indicate that the FDIC's disclosure regulations apply to the disclosure of information transferred to the FDIC from the OTS pursuant to sections 312 and 323 of the Act.

Section 310.3 Procedures for requests pertaining to individual records in a system of records. Section 310.3(b) is revised to make changes to the FDIC FOIA/PA Group address.

Section 310.4 Times, places, and requirements for identification of individuals making requests. Section 310.4(a) is revised to make changes to the FDIC FOIA/PA Group address.

Section 310.7 Request for amendment of record. Section 310.7 is revised to make changes to the FDIC FOIA/PA Group address.

Section 310.8 Agency review of request for amendment of record. Section 310.8(a) is revised to delete the "Senior Attorney" references.

Section 310.9 Appeal of adverse initial agency determination on access or amendment. 310.9(a) is revised to make changes to the FDIC FOIA/PA Group address.

IV. Effective Date of the Interim Rule

The Interim Rule will apply to all existing and future FOIA and PA issues involving State savings associations as of the Transfer Date. In this regard, the FDIC invokes the good cause exception to the requirements in the Administrative Procedure Act ("APA") that, before a rulemaking can be finalized, it must first be issued for public comment and, once finalized, must have a delayed effective date of 30 days from the publication date.¹

The FDIC believes good cause exists for making the Interim Rule effective immediately on the Transfer Date. Since the OTS will continue to function as a Federal banking agency until the Transfer Date and is a component part of the Department of Treasury, its existing rules will need to remain in place until the Transfer Date. On the Transfer Date, however, the OTS will cease functioning as a Federal banking agency and its responsibility for FOIA and PA issues relating to State savings associations will transfer to the FDIC.

As indicated above, the FDIC believes that the existence of essentially duplicate FOIA and PA regulations on the Transfer Date creates the possibility of public confusion. Therefore, the FDIC is providing this Interim Rule before the Transfer Date to provide clarity on this issue to the public and to facilitate a smooth transition of covered matters from the OTS to the FDIC.

For these reasons, in accordance with section 553(b)(B) of the Administrative Procedure Act (APA), the FDIC has determined that good cause exists to waive the general notice and opportunity for public comment requirements of the APA. Similarly, the FDIC has determined that good cause exists to make this Interim Rule effective as of the Transfer Date.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, (RFA) applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). As discussed above, consistent with section 553(b)(B) of the APA, the FDIC has determined that good cause exists in this case to waive the general notice and opportunity for public comment requirements of the APA; therefore, pursuant to 5 U.S.C. 601(2), the RFA does not apply.

VI. Small Business Regulatory Enforcement Fairness Act

The Office of Management and Budget has determined that the Interim Rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 ("SBREFA") (5 U.S.C. 801 *et seq.*). As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the Interim Rule may be reviewed.

List of Subjects in 12 CFR Parts 309 and 310

Banks, Banking, Freedom of Information, Privacy, Savings associations.

For the Reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends parts 309 and 310 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 309—DISCLOSURE OF INFORMATION

■ 1. The authority citation for part 309 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1819 "Seventh" and "Tenth."

¹ 5 U.S.C. 553.

■ 2. Revise § 309.1 to read as follows:

§ 309.1 Purpose and scope.

This part sets forth the basic policies of the Federal Deposit Insurance Corporation regarding information it maintains and the procedures for obtaining access to such information, including disclosure of information transferred to Federal Deposit Insurance Corporation from the Office of Thrift Supervision pursuant to section 312 and 323 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203. Section 309.2 sets forth definitions applicable to this part 309. Section 309.3 describes the types of information and documents typically published in the Federal Register. Section 309.4 explains how to access public records maintained on the Federal Deposit Insurance Corporation's World Wide Web page and in the Federal Deposit Insurance Corporation's Public Information Center or "PIC," and describes the categories of records generally found there. Section 309.5 implements the Freedom of Information Act (5 U.S.C. 552). Section 309.6 authorizes the discretionary disclosure of exempt records under certain limited circumstances. Section 309.7 outlines procedures for serving a subpoena or other legal process to obtain information maintained by the FDIC.

■ 3. Revise § 309.4(b) to read as follows:

§ 309.4 Publicly available records.

(b) Public Information Center. The FDIC maintains a Public Information Center or "PIC" that contains Corporate records that the Freedom of Information Act requires be made available for regular inspection and copying, as well as any records or information the FDIC, in its discretion, has regularly made available to the public. The PIC has extensive materials of interest to the public, including many Reports, Summaries and Manuals used or published by the Corporation that are made available, by appointment, for inspection and copying. The PIC is open from 9:00 AM to 4:00 PM, Monday through Friday, excepting federal holidays. It is located at 3501 North Fairfax Drive, Room E-1005, Arlington, VA 22226. The PIC may be reached during business hours by calling 1-(877) 275-3342 or 1-(703) 562-2000.

■ 4. In § 309.5 revise paragraphs (b)(1)(ii), (b)(1)(iii), (f)(4)(ii), and (h)(1) to read as follows:

§ 309.5 Procedures for requesting records.

(b) * * *

(1) * * *
(ii) By facsimile clearly marked Freedom of Information Act Request to the FOIA/PA Group: (703) 562-7977; or
(iii) By sending a letter to: Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, 550 17th Street, NW., Washington, DC 20429.

(f) * * *
(4) * * *
(i) * * *

(ii) The fee schedule will be set forth in the "Notice of Federal Deposit Insurance Corporation Records Fees" issued in December of each year or in such "Interim Notice of Federal Deposit Insurance Corporation Records Fees" as may be issued. Copies of such notices may be obtained at no charge from the Federal Deposit Insurance Corporation, FOIA/PA Group, 550 17th Street NW., Washington, DC 20429, and are available on the FDIC's World Wide Web page as noted in paragraph (f)(4)(i) of this section.

(h) Appeals. (1) Appeals should be addressed to the Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, FDIC, 550 17th Street, NW., Washington, DC 20429.

■ 5. In § 309.6, revise paragraphs (b)(3) and (b)(5) to read as follows:

§ 309.6 Disclosure of exempt records.

(b) * * *
(3) Disclosure to federal financial institutions supervisory agencies and certain other agencies. The Director of the Corporation's Division having primary authority over the exempt records, or designee, may in his or her discretion and for good cause, disclose to any authorized officer or employee of any federal financial institution supervisory agency including the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, Bureau of Consumer Financial Protection, the Financial Stability Oversight Council, the Securities and Exchange Commission, the National Credit Union Administration, or any other agency included in section 1101(7) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.) (RFP), any exempt records for a legitimate depository institution supervisory or regulatory purpose. The Director, or designee, may in his or her discretion and for good cause, disclose exempt records, including customer financial records, to certain other federal agencies as referenced in section 1113 of the RFP for the purposes and

to the extent permitted therein, or to any foreign bank regulatory or supervisory authority as provided, and to the extent permitted, by section 206 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 3109). Finally, the Director, or designee, may in his or her discretion and for good cause, disclose reports of examination or other confidential supervisory information concerning any depository institution or other entity examined by the Corporation under authority of Federal law to: Any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity; any officer, director, or receiver of such depository institution or entity; and any other person that the Corporation determines to be appropriate.

(5) Disclosure to servicers and serviced institutions. The Director of the Corporation's Division having primary authority over the exempt records, or designee, may disclose copies of any exempt record related to a depository institution data center, service corporation, or any other data center that provides data processing or related services to an insured institution (hereinafter referred to as "data center") to:

PART 310—PRIVACY ACT REGULATIONS

■ 6. The authority citation for part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 7. Revise § 301.1 to read as follows:

§ 310.1 Purpose and scope.

The purpose of this part is to establish regulations implementing the Privacy Act of 1974, 5 U.S.C. 552a. These regulations delineate the procedures that an individual must follow in exercising his or her access or amendment rights under the Privacy Act to records maintained by the Corporation in systems of records, including information transferred to Federal Deposit Insurance Corporation from the Office of Thrift Supervision pursuant to sections 312 and 323 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203.

■ 8. Revise § 310.3(b) to read as follows:

§ 310.3 Procedures for requests pertaining to individual records in a system of records.

* * * * *

(b) Requests by individuals for access to records pertaining to them and maintained within one of the Corporation's designated systems of records should be submitted in writing to the Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, 550 17th Street, NW., Washington, DC 20429. Each such request should contain a reasonable description of the records sought, the system or systems in which such record may be contained, and any additional identifying information, as specified in the Corporation's Federal Register "Notice of Systems of Records" for that particular system, copies of which are available upon request from the FOIA/PA Group.

* * * * *

■ 9. Revise § 310.4(a) to read as follows:

§ 310.4 Times, places, and requirements for identification of individuals making requests.

(a) Individuals may request access to records pertaining to themselves by submitting a written request as provided in § 310.3 of these regulations, or by appearing in person on weekdays, other than official holidays, at the Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, 550 17th Street, NW., Washington, DC 20429, between the hours of 8:30 a.m. and 5 p.m.

* * * * *

■ 10. Revise § 310.7 to read as follows:

§ 310.7 Request for amendment of record.

The Corporation will maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness and completeness as is reasonably necessary to assure fairness to the individual in the determination. An individual may request that the Corporation amend any portion of a record pertaining to that individual which the Corporation maintains in a designated system of records. Such a request should be submitted in writing to the Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, 550 17th Street, NW., Washington, DC 20429 and should contain the individual's reason for requesting the amendment and a description of the record (including the name of the appropriate designated system and category thereof) sufficient to enable the Corporation to identify the particular record or portion thereof with respect to which amendment is sought.

■ 11. Revise § 310.8(a) to read as follows:

§ 310.8 Agency review of request for amendment of record.

(a) Requests by individuals for the amendment of records will be acknowledged by the FOIA/PA Group, and referred to the system manager of the system of records in which the record is contained for determination, within ten business days following receipt of such requests. Promptly thereafter, the FOIA/PA Group will notify the individual of the system manager's decision to grant or deny the request to amend.

* * * * *

■ 12. Revise § 310.9(a) to read as follows:

§ 310.9 Appeal of adverse initial agency determination on access or amendment.

(a) A system manager's denial of an individual's request for access to or amendment of a record pertaining to him/her may be appealed in writing to the Corporation's General Counsel (or designee) within 30 business days following receipt of notification of the denial. Such an appeal should be addressed to the Federal Deposit Insurance Corporation, Attn: FOIA/PA Group, 550 17th Street, NW., Washington, DC 20429, and contain all the information specified for requests for access in § 310.3 or for initial requests to amend in § 310.7, as well as any other additional information the individual deems relevant for the consideration by the General Counsel (or designee) of the appeal.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 14th day of June 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011-15342 Filed 6-20-11; 8:45 am]

BILLING CODE 6714-01-P

FARM CREDIT ADMINISTRATION

12 CFR Parts 651 and 652

RIN 3052-AC51

Federal Agricultural Mortgage Corporation Governance and Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; Risk-Based Capital Requirements; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), issued a final rule under parts 651 and 652 on

April 27, 2011 (76 FR 23459) amending our regulations on the Risk-Based Capital Stress Test used by the Federal Agricultural Mortgage Corporation. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is June 15, 2011.

DATES: Effective Date: Under the authority of 12 U.S.C. 2252, the regulation amending 12 CFR parts 651 and 652 published on April 27, 2011 (76 FR 23459) is effective June 15, 2011.

FOR FURTHER INFORMATION CONTACT:

Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4280, TTY (703) 883-4434,

or
Laura McFarland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102-5090, (703) 883-4020, TTY (703) 883-4020.

(12 U.S.C. 2252(a)(9) and (10).)

Dated: June 15, 2011.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2011-15442 Filed 6-20-11; 8:45 am]

BILLING CODE 6705-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2011-0070; Airspace Docket No. 10-ASO-43]

Amendment of Class E Airspace; Cocoa, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Cocoa, FL, as the Merritt Island Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed at Merritt Island Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, August 25, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of

Federal Regulations, part 51, subject to the annual revision of FAA, Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-6364.

SUPPLEMENTARY INFORMATION:

History

On April 15, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Merritt Island Airport, Cocoa, FL (75 FR 21266) Docket No. FAA-2011-0070. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures developed at Merritt Island Airport, Cocoa, FL. Airspace reconfiguration is necessary due to the decommissioning of the Merritt Island NDB and cancellation of the NDB approach, and for continued safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. 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 United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Merritt Island Airport, Cocoa, FL.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

- 1. The authority citation for 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, dated August 18, 2010, 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.

* * * * *

ASO FL E5 Cocoa, FL [Amended]

Merritt Island Airport, FL
(Lat. 28°20'30" N., long. 80°41'08" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Merritt Island Airport and within 2.5 miles each side of the 303° bearing from the Merritt Island Airport, extending from the 6.3-mile radius to 7 miles northwest of the airport; excluding that airspace within the Titusville, FL, and Melbourne, FL, Class E airspace areas.

Issued in College Park, Georgia, on June 2, 2011.

Mark D. Ward,

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

[FR Doc. 2011-15116 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2011-0249; Airspace Docket No. 11-ANM-6]

Amendment of Class E Airspace; Bozeman, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Bozeman, Gallatin Field Airport, Bozeman, MT, to accommodate aircraft using Instrument Landing System (ILS) Localizer (LOC) standard instrument approach procedures at the airport. This improves the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also adjusts the airport's geographic coordinates for the Class D and E airspace areas, and updates the airport name.

DATES: Effective date, 0901 UTC, August 25, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203-4537.

SUPPLEMENTARY INFORMATION:

History

On April 7, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend controlled airspace at Bozeman, MT (76 FR 19281). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and E airspace designations are published in paragraph 5000, 6002, 6004 and 6005, respectively, 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 D and Class E airspace

designations listed in this document will be published subsequently in that Order. With the exception of editorial changes, this rule is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E surface airspace designated as an extension to Class D surface area at Bozeman, Gallatin Field Airport, Bozeman, MT. Controlled airspace is necessary to accommodate aircraft using the ILS LOC standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations. The geographic coordinates of the airport for Class D airspace, Class E surface area airspace, and Class E airspace extending upward from 700 feet above the surface, are being adjusted in accordance with the FAA's aeronautical database. This action also updates the airport name to Bozeman, Gallatin Field Airport, MT, from Bozeman, Gallatin Field, MT.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies controlled airspace at Bozeman, Gallatin Field Airport, Bozeman, MT.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ANM MT D Bozeman, MT [Amended]

Bozeman, Gallatin Field Airport, MT
(Lat. 45°46'39" N., long. 111°09'07" W.)

That airspace extending upward from the surface to and including 7,000 feet MSL within a 4.4-mile radius of Bozeman, Gallatin Field Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM MT E2 Bozeman, MT [Amended]

Bozeman, Gallatin Field Airport, MT
(Lat. 45°46'39" N., long. 111°09'07" W.)

Within a 4.4-mile radius of Bozeman, Gallatin Field Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E airspace designated as an extension to a Class D surface area.

* * * * *

ANM MT E4 Bozeman, MT [Modified]

Bozeman, Gallatin Field Airport, MT
(Lat. 45°46'39" N., long. 111°09'07" W.)

That airspace extending upward from the surface within 3 miles each side of the 316° bearing of Bozeman, Gallatin Field Airport extending from the 4.4-mile radius of the airport to 15.5 miles northwest of the airport, and that airspace 2.4 miles each side of the

212° bearing of the Bozeman, Gallatin Field Airport extending from the 4.4-mile radius of the airport to 7 miles southwest of the airport.

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

* * * * *

ANM MT E5 Bozeman, MT [Amended]

Bozeman, Gallatin Field Airport, MT
(Lat. 45°46'39" N., long. 111°09'07" W.)

That airspace extending upward from 700 feet above the surface within a 13.5-mile radius of Bozeman, Gallatin Field Airport, and within 4.8 miles northeast and 13 miles southwest of the 316° bearing of the airport extending from the 13.5-mile radius to 24.4 miles northwest of the airport.

Issued in Seattle, Washington, on June 10, 2011.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–15118 Filed 6–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219–AB76

Maintenance of Incombustible Content of Rock Dust in Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This final rule replaces the Mine Safety and Health Administration's Emergency Temporary Standard (ETS) pursuant to section 101(b) of the Federal Mine Safety and Health Act of 1977. The final rule adopts the requirements contained in the ETS. Under the final rule, mine operators must maintain the incombustible content of combined coal dust, rock dust, and other dust to at least 80 percent in underground areas of bituminous coal mines. The final rule further requires that the incombustible content of such combined dust be increased 0.4 percent for each 0.1 percent of methane present.

Accumulations of coal dust can ignite, resulting in an explosion, or after an explosion, they can intensify flame propagation, increasing the severity of explosions. The final rule, like the ETS, reduces both the potential for a coal mine explosion and the severity of explosions should they occur.

DATES: *Effective date:* June 21, 2011.

FOR FURTHER INFORMATION CONTACT:

Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at fontaine.roslyn@dol.gov: (e-mail), 202-693-9440 (voice), or 202-693-9441 (facsimile).

SUPPLEMENTARY INFORMATION: MSHA is including the following outline to assist the public in finding information in the preamble.

- I. Introduction
- II. Discussion of Final Rule
- III. Regulatory Economic Analysis
 - A. Executive Order (E.O.) 12866 and E.O. 13563
 - B. Population at Risk
 - C. Benefits
 - D. Compliance Costs
 - E. Net Benefits
- IV. Feasibility
 - A. Technological Feasibility
 - B. Economic Feasibility
- V. Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA)
 - A. Definition of a Small Mine
 - B. Factual Basis for Certification
- VI. Paperwork Reduction Act of 1995
- VII. Other Regulatory Considerations
 - A. The Unfunded Mandates Reform Act of 1995
 - B. Executive Order 13132: Federalism
 - C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families
 - D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights
 - E. Executive Order 12988: Civil Justice Reform
 - F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
 - G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
 - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- VIII. References
- IX. Final Rule—Regulatory Text

I. Introduction

Rock dust is a pulverized stone used to cover coal dust and render accumulations of it inert. The Mine Safety and Health Administration (MSHA) defines “rock dust” under 30 CFR 75.2 as:

Pulverized limestone, dolomite, gypsum, anhydrite, shale, adobe, or other inert material, preferably light colored, 100 percent of which will pass through a sieve having 20 meshes per linear inch and 70 percent or more of which will pass through a sieve having 200 meshes per linear inch; the particles of which when wetted and dried will not cohere to form a cake which will not be dispersed into separate particles by a light

blast of air; and which does not contain more than 5 percent combustible matter or more than a total of 4 percent free and combined silica (SiO₂), or, where the Secretary finds that such silica concentrations are not available, which does not contain more than 5 percent of free and combined silica.

Mine operators are required to apply rock dust in underground bituminous coal mines to reduce the explosion potential of coal dust and other dust generated during mining operations. Effective and frequent rock dust application is essential to protect miners from the potential of a coal dust explosion, or if one occurs, to reduce its severity.

When drafting the Federal Coal Mine Safety Act of 1952, Public Law 49-77 (1952), the Congress recognized a need to prevent major disasters in underground coal mines. At that time, the Congress particularly noted the threat of coal mine explosions due to accumulations of coal dust.

Under the Federal Coal Mine Health and Safety Act of 1969 (Coal Act), Public Law 91-173, Congress emphasized, among other things, the need for interim safety standards to improve control of combustibles—such as loose coal—that propagate explosions. The Congress also recognized the need to prevent coal dust from accumulating in explosive quantities and to prevent coal dust explosions. Congress included language related to rock dusting, which provided:

Where rock dust is required to be applied, it shall be distributed upon the top, floor, and sides of all underground areas of a coal mine and maintained in such quantities that the incombustible content of the combined coal dust, rock dust, and other dust shall be not less than 65 per centum, but the incombustible content in the return aircourses shall be no less than 80 per centum. Where methane is present in any ventilating current, the per centum of incombustible content of such combined dust shall be increased 1.0 and 0.4 per centum for each 0.1 per centum of methane where 65 and 80 per centum, respectively, of incombustibles are required. [Conference Report No. 91-761, Section 304(d)].

The Congress retained this Coal Act provision in the Federal Mine Safety and Health Act of 1977 (Mine Act). The higher limit for return airways was determined in large part because fine “float” coal dust (100 percent < 200 mesh or 75 micrometers (µm)) tends to collect in these airways.

On September 23, 2010, under section 101(b) of the Mine Act, MSHA published an ETS, notice of public hearings, and notice of close of comment period (75 FR 57849) revising the existing standard at 30 CFR 75.403, “Maintenance of incombustible content

of rock dust” applicable to underground areas of bituminous coal mines. The ETS served both as an emergency temporary final rule with immediate effect and provided an opportunity for notice and comment. Under the Act, MSHA is required to promulgate a final rule within nine months after publication of an ETS.

The legislative history of the Mine Act reinforces the statutory language regarding the ETS providing opportunity for comment “so that all views can be carefully considered in connection with the issuance of a permanent standard.” S. Rept. No. 95-181, 24 (1977). With publication of this final rule, MSHA has fulfilled its obligations under section 101(b) of the Mine Act.

MSHA held four public hearings on the ETS: St. Louis, Missouri, October 26, 2010; Birmingham, Alabama, October 28, 2010; Lexington, Kentucky, November 16, 2010; and Charleston, West Virginia, November 18, 2010. The public comment period closed on December 20, 2010. In addition to testimony provided by the mining community at the public hearings, MSHA received comments to the rulemaking record. Comments are discussed below.

To clarify MSHA’s enforcement under the ETS, the Agency issued Program Information Bulletin (PIB) No. P10-18, “Accumulation of Combustible Materials and Rock Dust,” on September 21, 2010 (September 2010 PIB). The PIB emphasized that underground coal mine operators had not been rock dusting in all required areas and were not maintaining the required levels of rock dust applications in compliance with the previous MSHA standard of no less than 65 per centum in intake aircourses, and no less than 80 per centum in return aircourses under 30 CFR 75.403.

On October 14, 2010, MSHA issued Procedure Instruction Letter No. 10-V-16, “Accumulation of Combustible Materials and Rock Dust” (October 2010 PIL). The October 2010 PIL provided instruction for MSHA enforcement personnel regarding accumulation of combustible materials and rock dust. In the 2010 PIL, MSHA emphasized each mine operator’s responsibility to comply with the ETS by October 7, 2010, for newly mined areas; and November 22, 2010, for all other areas of the mine. MSHA provided instruction to Agency personnel for enforcing the ETS and for taking spot rock dust samples at applicable mines.

II. Discussion of Final Rule

Final 30 CFR 75.403 retains the requirements of the ETS verbatim to

ensure continuous protection for underground bituminous coal miners from grave danger due to hazards of coal dust explosions. Mine operators must maintain the incombustible content of the combined coal dust, rock dust, and other dust in all areas of underground bituminous coal mines to at least 80 percent. Where rock dust is required, it must be distributed upon the top, floor, and ribs of all underground areas of a bituminous coal mine and maintained in such quantities that the incombustible content of the combined coal dust, rock dust, and other dust will be at least 80 percent. The final rule, like the ETS, increases the incombustible content in all areas, other than return air courses, from 65 percent to 80 percent. In addition, the final rule, like the ETS, requires that where methane is present in any ventilating current, the percent of incombustible content of such combined dust shall be increased 0.4 percent for each 0.1 percent of methane.

In developing the final rule, MSHA considered its accident investigation reports of mine explosions in intake air courses that involved coal dust (Dubaniewicz 2009); the National Institute for Occupational Safety and Health's (NIOSH) Report of Investigations 9679 (Cashdollar *et al.*, 2010), "Recommendations for a New Rock Dusting Standard to Prevent Coal Dust Explosions in Intake Airways"; MSHA's experience and data; public comments on the ETS; and testimony provided at the public hearings. MSHA believes that the requirements of the final rule are necessary to continue to protect underground bituminous coal miners from grave danger.

In the 1920s, the U.S. Bureau of Mines (the Bureau) conducted industry-wide surveys of coal dust particle size produced by mining. The Bureau conducted large-scale explosion tests using dust particles of the size range obtained from the survey to determine the amount of rock dust required to prevent explosion propagation. The results of this research were the basis for the interim safety standard under the Coal Act and the standard promulgated under the Mine Act.

Mining technology, equipment, and methods have changed significantly since the 1920s. In the latest study, NIOSH and MSHA collaborated to conduct a survey to update information about existing coal dust particle size distribution in underground bituminous coal mines. MSHA inspectors collected a variety of dust samples from intake and return airways from these mines. NIOSH found that the coal dust particle size distribution in intake airways is

much finer than in mines of the 1920s because of the significant changes in mining methods and equipment (Cashdollar *et al.*, 2010).

Given the results of this latest coal dust particle size survey, NIOSH conducted a series of large-scale dust explosion tests at the NIOSH Lake Lynn Experimental Mine (LLEM) using the dust survey results to determine the incombustible content necessary to prevent explosion propagation. NIOSH determined that to significantly decrease the potential for propagation of explosions, the finer coal dust particle size found in intake airways requires a greater incombustible content than the 65 percent required under MSHA's standard at that time, since the explosion hazard increases as the coal dust particle size decreases. Based on the results of the LLEM testing, NIOSH recommended an 80 percent total incombustible content (TIC) in both intake and return airways of bituminous coal mines. In addition, despite survey indications that return dust particle sizes are finer than those in past studies, NIOSH found that the existing requirement of 80 percent TIC is still sufficient for these areas, in the absence of methane. The testing showed that the TIC required to prevent flame propagation becomes much less dependent on coal particle size as the TIC approaches and exceeds 80 percent (Cashdollar *et al.*, 2010). Therefore, the results of the experiments support MSHA's final rule requiring 80 percent TIC for all areas of underground bituminous coal mines.

In 2009, NIOSH published a paper examining past mine explosions to identify the ignition locations and ignition sources responsible for the most severe explosion events ignited in intake air courses resulting in death (Dubaniewicz 2009). MSHA reviewed all of the accident reports identified by NIOSH for the period from 1976 through 2001 (26 years). MSHA determined that there were six explosions that resulted in 46 fatalities in which rock dusting conditions and practices in intake air courses contributed to the severity of the explosions. These explosions occurred at: Scotia Mine in 1976; Adkins Coal Company, No. 11 Mine in 1981; No. 1 Mine, RFH Coal Company in 1982; Southmountain Coal Company Mine No. 3 in 1992; No. 9 Mine, Day Branch Coal Company in 1994; and Jim Walter Resources, Inc. No. 5 Mine in 2001.

The Scotia Mine, Scotia Coal Company, experienced two explosions in 1976: March 9 and March 11. The first explosion, which claimed the lives of 15 miners, resulted from the ignition

of a large methane accumulation. Coal dust entered into this explosion, but only to a minor degree. The second explosion, which claimed the lives of eleven miners, started as a methane explosion and coal dust entered into the explosion and aided in the propagation of the explosion (DOL/MSHA 1993).

On December 7, 1981, an explosion at the Adkins Coal Company, No. 11 Mine resulted in fatal injuries to eight miners. A coal dust explosion occurred when a blown-out shot ignited coal dust put into suspension by other blasts of the coal face. Sufficient quantities of rock dust were not applied to the mine surfaces and coal dust deposited on the floor, roof, and ribs from previously mined areas ignited and propagated the explosion away from the face (DOL/MSHA 1981).

The No. 1 Mine, RFH Coal Company, experienced an explosion on January 20, 1982, resulting in the death of seven miners. Flames from explosives were not contained within the limits of the coal being blasted killing two miners. A coal dust explosion occurred when the flame ignited coal dust put into suspension by previous blasts. Sufficient quantities of rock dust were not applied to the mine surfaces and coal dust propagated the explosion throughout the entire mine. This coal dust explosion claimed the lives of five more miners (DOL/MSHA 1982).

The Southmountain Coal Company Mine No. 3 experienced an explosion on December 7, 1992, resulting in fatal injuries to eight miners. An explosion fueled by a limited quantity of methane created enough force to place coal dust into suspension ahead of the flame front. Ignition of the coal dust allowed immediate propagation of the explosion because sufficient quantities of incombustible rock dust were not available to inert the coal dust. The coal dust explosion propagated to the surface areas of the mine (DOL/MSHA 1993).

The No. 9 Mine, Day Branch Coal Company, experienced an explosion on May 11, 1994, resulting in fatal injuries to two miners. A limited quantity of methane was ignited, and both methane and coal dust accumulations contributed to the propagation of the initial explosion flame. As the explosion traveled through the panel the methane was consumed, however, coal dust suspended in the air propagated the explosion approximately 715 feet away from the face (DOL/MSHA 1995).

On September 23, 2001, two explosions at the Jim Walter Resources, Inc. No. 5 Mine resulted in fatal injuries to thirteen miners. The first explosion was a methane explosion caused when a roof fall occurred and damaged a large

six-ton 64-volt scoop battery that was connected to a battery charger. One miner was severely injured or killed by the first explosion. The MSHA investigation report concluded that the second explosion also started as a methane explosion and strengthened when it encountered additional methane and coal dust. The explosion, fueled primarily by coal dust, propagated outby and claimed the lives of 12 miners (DOL/MSHA 2002).

The impact of these mine explosions might have been significantly reduced had there been quantities of rock dust applied in accordance with the final rule. The rock dust would have prevented the explosions from propagating to areas where miners were working, thus saving lives.

In addition, MSHA is also aware of at least 4 explosions or ignitions occurring in underground bituminous mines from 1985 through 2008 which did not result in miner injuries or fatalities; however, MSHA investigation reports concluded that poor rock dust practices contributed to these explosions.

Several commenters on the ETS, including participants at the public hearings, stated that they agreed with MSHA's actions in issuing the ETS and the supporting documentation for increasing the incombustible content in intake entries to 80 percent in underground bituminous coal mines. These commenters stated that explosions in U.S. underground coal mines have escalated in magnitude. According to the commenters, one explosion was so powerful that it had ripped a roof strap bolted to the mine roof, while another explosion destroyed the welds on a scoop bucket. MSHA's experience indicates that many explosions in underground bituminous coal mines can be intensified by coal dust.

Where rock dust is required to be applied, the final rule requires that mine operators distribute it upon the top, floor, and sides of all underground areas of a coal mine. MSHA intends for mine operators to rock dust areas that pose the greatest risk to miners. These areas include areas near the active faces and areas that contain ignition sources, such as conveyor belt drives and conveyor belt entries because they pose the greatest potential for methane and coal dust explosions.

Some commenters expressed concerns with MSHA's enforcement of the ETS because they believe mine operators are applying less rock dust in underground bituminous mines than required under the ETS. For example, they noted a longwall tailgate where a longwall shearer had cut across a "thousand-plus

foot longwall face" and deposited considerable coal dust accumulations in the immediate tailgate entry that was not cleaned up or effectively rock dusted. They also questioned MSHA's enforcement of the rock dust maintenance standard in remote areas such as remotely-located bleeder entries. These commenters noted that in Alabama, underground coal mine bleeder entries have high levels of methane, pillars yielding raw coal ribs with fresh sloughage, coal accumulation, and no mechanism to apply rock dust.

The ETS and this final rule do not change existing 30 CFR 75.402 which addresses remote areas where there is no feasible mechanism to apply additional rock dust and states:

All underground areas of a coal mine, except those areas in which the dust is too wet or too high in incombustible content to propagate an explosion, shall be rock dusted to within 40 feet of all working faces, unless such areas are inaccessible or unsafe to enter or unless the Secretary or his authorized representative permits an exception upon his finding that such exception will not pose a hazard to the miners. All crosscuts that are less than 40 feet from a working face shall also be rock dusted.

The September 2010 PIB provided guidance to operators on existing § 75.402 and ETS § 75.403. It suggested that they use bulk dusters, trickle dusters or high-pressure rock dusting machines to blow the rock dust into inaccessible areas to maintain the 80% TIC in remote areas.

In the ETS preamble, MSHA stated that "Rock dust, when effectively applied, can prevent explosions or reduce the severity of explosions" (75 FR 57851). In response, commenters questioned what MSHA meant by the term "effectively." In the September 2010 PIB, MSHA emphasized that mine operators are responsible for applying rock dust in areas of underground bituminous coal mines to inert coal and float coal dust, loose coal, and other combustible materials to comply with the ETS. Miners are exposed to grave hazards in these underground mines. As little as 0.005 inch (the thickness of a sheet of paper) of coal and float coal dust on top of rock dusted surfaces is capable of propagating an explosion. Therefore, removal of coal dust, including float coal dust, loose coal, other combustible materials, and the application and re-application, where necessary, of rock dust are essential to effectively protect miners from the potential of a coal dust explosion; or if one occurs, to reduce its severity and prevent loss of life.

In the October 2010 PIL, MSHA issued instructions to its inspectorate to enhance enforcement of the ETS and to check mine operators' compliance with the ETS and to take appropriate action, as necessary. MSHA stated that if mine operators allow coal, float coal dust, and other combustible materials to accumulate in active workings and on equipment in the mine, or if the TIC of the combined coal dust, rock dust, and other dust in any area of the mine does not meet the quantities required by the ETS, inspectors should take appropriate enforcement action.

MSHA stated in the October 2010 PIL that during regular inspections MSHA inspectors should continue to sample the incombustible content as required by MSHA's existing sampling policy and procedures for collecting rock dust samples, including sampling to within 50 feet of the tailpiece. In addition, the 2010 PIL instructed inspectors to take selective spot samples in areas that were rock dusted prior to September 23, 2010 (the date the ETS was published), to determine whether the mine operator is maintaining the 80 percent TIC requirements of the ETS. MSHA also recommended that inspectors conduct selective spot sampling in immediate return entries, especially longwall tailgate entries, and areas containing seals. MSHA instructed inspectors to begin spot sampling near the active faces and in areas that contain ignition sources, such as conveyor belt drives and conveyor belt entries because these areas pose the greatest potential for methane and coal dust explosions. Inspectors were instructed to identify the spot samples in the same manner as samples collected under the existing sampling policy and use the same mailing procedures. MSHA's existing sampling policy and procedures are under review.

When MSHA found a violation of 30 CFR 75.400, 75.402, or 75.403 under the ETS, the October 2010 PIL instructed Agency inspectors that abatement should be set at the shortest reasonable time after careful evaluation of conditions on a mine-by-mine basis, including whether the mine liberates large volumes of methane gas or has a history of methane ignitions. Inspectors were further instructed that if an operator failed to totally abate the violation within the specified time, they should consider issuance of a Section 104 (b) Order of Withdrawal.

If a mine operator has repeat violations of §§ 75.400, 75.402 or 75.403, the October 2010 PIL advised that inspection personnel should discuss the adequacy of the cleanup program with the operator and consider

requiring the use of more effective rock dusting equipment and methods for controlling and maintaining the incombustible content of the combined coal dust, rock dust, and other dust along with elevated enforcement actions. Inspection personnel should also consider changes to the cleanup program which would require the use of bulk dusters, trickle dusters or high-pressure rock dusting machines to continuously rock dust the areas downwind of belt transfers, the returns of active sections, the tailgates of longwalls and the bleeder entries.

A commenter suggested dividing existing § 75.400 (accumulations) into three requirements. According to the commenter, this action would separate violations for accumulations on rock dusted surfaces, on mobile equipment, and on fixed plant equipment. This comment is outside the scope of this rulemaking.

Some commenters objected to application of rock dust by hand. In their opinion, this method is inadequate to protect miners. Application of rock dust by hand is not prohibited under the final rule, as long as the 80 percent incombustible content of the combined coal dust, rock dust, and other dust is maintained. Based on MSHA experience, mine operators are capable of maintaining the requirements of the final rule through application of rock dust by hand. However, MSHA acknowledges that there are more efficient methods of rock dusting, such as:

- High pressure bulk—transfers large dust quantities in short time with limited labor required.
- Bantam—portable unit that can mount on equipment to easily dust face areas or can be used to spot dust.
- Slinger—portable duster with good perimeter coating in a single pass.
- Trickle—good for dusting return entries or belt entries, run continuously.
- Wet/Slurry—more coverage per pound of dust, good adherence to coal, can dust with miners in by and can be easily applied in high areas.
- Mine-wide automated dusting systems—System can be controlled by programmable logic controllers requiring less labor.

A commenter questioned whether it is appropriate for MSHA to rely on results of the NIOSH explosibility testing (Cashdollar *et al.*, 2010) from one coal seam and apply it to all types of coal. The commenter stated that the overall hazard to miners in other coal seams is inaccurately quantified by this study. Other commenters urged MSHA to set rock-dusting standards based on a worst-case scenario (using high volatile

coal) with no relaxation for lower volatile coal.

In its experimental studies of the effect of particle size on explosion hazard, NIOSH used coal from the Pittsburgh coal seam. The data represent the worst-case condition as stated in the ETS preamble and in the NIOSH Report of Investigations 9679 (Cashdollar *et al.*, 2010). NIOSH used this approach to limit variables that could have influenced the experiments related to particle size alone. Published studies, reported by Cashdollar 1996 and Cashdollar *et al.*, 2010, have examined the roles of seam-specific and site-specific coal qualities on explosibility. Based on this research, there are two primary coal characteristics that influence dust explosibility and vary by seam: (1) Inherent ash and moisture content and (2) the volatility of the coal. The final rule, like the ETS, considers the variability of inherent ash and moisture of coal as part of the incombustible content of a sample used to calculate the 80% requirement. The volatility of the coal is expressed as the percentage of volatile matter determined by proximate analysis. Studies published by the U.S. Bureau of Mines (USBM) found that all coals with volatility in excess of 12% are explosible. More specifically, higher volatile coals require a lower dust concentration (mass of dust per unit volume) to produce an explosion. The Pittsburgh seam coal has an average volatility of 37%. Experimental studies comparing explosion hazards of various coals have defined a relationship between the minimum rock dusting requirements to inert and the volatility of coals (Cashdollar, 1996).

Lower volatile coals (less than 30% volatile matter) require less rock dust to inert the coal dust, although it would not be a significant reduction in the amount of rock dust. The final rule is based on the worst-case conditions of coal dust (particles less than 200 mesh) for high volatile bituminous coals. Therefore, the final rule retains the ETS language and provides an extra margin of safety for coals with lower volatile content.

Commenters questioned whether additional rock dust, particularly in intake airways, increases miners' exposures to respirable coal mine dust above the allowable limit. This commenter suggested that the ETS, coupled with MSHA's proposal to reduce the respirable coal mine dust limit by half in these same air courses, created incompatible standards. This commenter believes that if MSHA is to require both standards, then MSHA must revise its position with regard to

the use of wet dusting systems for intake roadways and aircourses to reduce respirable dust exposures from rock dusting.

MSHA standards do not require that rock dust contain any respirable fraction. MSHA's existing definition for rock dust establishes specifications for rock dust. Operators must assure that rock dust applied meets this definition.

With regard to the utility of wet dusting methods to control rock dust in underground coal mines, MSHA believes that for this approach to be effective, the wet products must be applied often enough to prevent an accumulation of float coal dust atop coated surfaces. The use of wet dusting technology has some limitations in an underground coal mine. The use of wet or foam-type application of rock dust and the use of other inerting agents have been explored for decades. These wet products work by binding or coating coal dusts and preventing them from being entrained in an explosion front rather than mixing with and inerting the coal dust. This creates a coating on surfaces, on top of which new coal dust can accumulate. This coating will not provide as effective inerting capability in the event of an explosion as dry rock dust.

Finally, some commenters expressed concern that MSHA is precluding some mine operators from using scrubbers in underground mines. These commenters suggested that MSHA should allow the immediate use of scrubbers on mining machinery where coal dust is being generated at the face, stating that scrubbers remove 92 percent of respirable dust out of the air, which would help operators achieve the rock dusting requirements. Commenters did not provide supporting data. Although MSHA does not prohibit the use of scrubbers in appropriate cases, this issue is outside the scope of this rulemaking.

Commenters objected to the protracted time that it takes MSHA to obtain results of rock dust samples. These commenters also inquired as to the availability of a method to immediately assess compliance through real-time monitoring instead of waiting weeks for compliance results. The Coal Dust Explosibility Meter (CDEM) is new technology that uses optical reflectance to measure the relative concentration ratio of coal dust (black) to rock dust (white/grey) in a rock dust sample collected in an underground coal mine. The CDEM is intended to be used by mine operators and MSHA as a screening tool inside the mine to assess the explosion hazard potential in real time and take prudent actions to

mitigate the hazard. The CDEM is not intended to replace the current MSHA laboratory analysis of coal mine dust samples for incombustible content, but to serve as a supplemental device for enhancing mine safety through improved rock dusting practices. MSHA is improving its laboratory analysis function to reduce analysis time.

III. Regulatory Economic Analysis

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order (E.O.) 12866, the Agency must determine whether a regulatory action is “significant” and subject to review by the Office of Management and Budget (OMB). Section 3(f) of E.O. 12866 defines a “significant regulatory action” as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a

sector of the economy, productivity, competition, jobs, the environment, public health or safety or state local or tribal governments or communities (also referred to as “economically significant”); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

Under E.O.s 13563 and 12866, the Agency must assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the

importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

MSHA has determined that this final rule does not have an annual effect of \$100 million or more on the economy, and is not an economically “significant regulatory action” pursuant to § 3(f) of E.O. 12866. However, the final rule, like the ETS, raises novel, legal or policy issues and is therefore subject to OMB review.

MSHA has not prepared a separate regulatory economic analysis for this rulemaking. Rather, the analysis is presented below.

B. Population at Risk

The final rule applies to all underground bituminous coal mines in the United States. There are approximately 415 active underground bituminous coal mines employing 47,119 miners. Table 1 presents the 415 underground bituminous coal mines by employment size.

TABLE 1—UNDERGROUND BITUMINOUS COAL MINES AND MINERS, 12 MONTH AVERAGE AS OF JANUARY 2010, BY EMPLOYMENT SIZE *

Mine size	Number of underground bituminous coal mines	Total employment at underground coal mines
1–19 Employees	73	1,136
20–500 Employees	330	29,390
501+ Employees	12	9,708
Contractors .....	.....	6,885
Total	415	47,119

* Source: MSHA MSIS Data (March 2010).

The 415 underground coal mines produced an estimated 331.7 million short tons of coal in 2009. The average price of coal in underground mines in

2009 was \$55.77 per short ton and was obtained from the U.S. Department of Energy (DOE), Energy Information Administration (EIA), *Annual Coal*

Report 2009, October 2010, Table 28. Table 2 presents the coal production and revenues for 2009.

TABLE 2—COAL PRODUCTION IN SHORT TONS AND COAL REVENUES IN 2009 FOR MINES AFFECTED BY THE FINAL RULE

Mine size	Coal production	Coal revenue
1–19 Employees	4,972,836	\$277,335,064
20–500 Employees	236,453,706	13,187,023,184
500+ Employees	90,256,010	5,033,577,678
Total	331,682,552	18,497,935,926

C. Benefits

Since MSHA did not receive any comments on the benefits analysis presented in the preamble of the ETS, the Agency has retained that analysis for the final rule. For the convenience of the reader, the entire benefits analysis is presented below.

Accumulations of coal dust can propagate and contribute to the severity of mine explosions. During the period 1976 to 2001 (26 years) there were 26 fatal methane and/or coal dust explosions in underground coal mines that resulted in 139 fatalities (Dubaniewicz, 2009). In 6 of those 26

explosions, the rock dusting conditions and practices in intake air courses were identified as either the cause or a contributing factor in the explosions. In addition to reviewing the Dubaniewicz report, MSHA also reviewed the Agency’s own fatal investigation reports for these explosions. Based upon this

review, MSHA determined that the requirements in this final rule would have either prevented or reduced the severity of these explosions. These explosions resulted in 46 deaths, approximately 2 deaths per year (46 deaths/26 years). The requirements in this final rule probably would not have prevented all of the deaths from the 6 explosions. MSHA estimates that the final rule will prevent approximately 1 to 1.5 deaths per year.

MSHA also studied explosions and ignitions resulting in non-fatal injuries that occurred during the period from 1986 through 2001 (16 years). During that time, there were 3 explosions that resulted in at least 4 non-fatal injuries in which rock dusting conditions and practices contributed to the explosions. Based on the data, MSHA determined that the requirements in the final rule will prevent 1 additional injury about every 4 years (4 injuries/16 years).

However, these estimates are not precise and the final rule could prevent additional injuries. MSHA is also aware of at least 4 explosions or ignitions occurring from 1985 through 2008 which did not result in any injuries or fatalities; however, the investigation report concluded that poor rock dust practices contributed to these explosions. MSHA projects that the final rule will improve rock dust practices in underground bituminous coal mines and the safety and health of miners.

The final rule will decrease explosibility of the coal dust deposited in underground bituminous coal mines, which will decrease both the probability that an explosion will occur and, if an explosion does occur, the severity of the explosion. MSHA projects a significant reduction in fatalities and injuries with the implementation of the final rule.

MSHA calculates benefits in terms of an annual average. However, the final rule is targeted at mine explosions, which are catastrophic events that may not occur on a regular basis. They can unfortunately occur multiple times in a single year, but may not occur again for a number of years. Thus, MSHA's average estimate of 1 to 1.5 deaths prevented a year cannot fully reflect the impact of preventing a given explosion or series of explosions, since each would be unique in terms of its impacts. MSHA has estimated the benefits of the final rule within this context. The number of fatalities and injuries that may be prevented by this final rule may be understated.

D. Compliance Costs

MSHA did not receive any comments that directly addressed the cost estimates presented in the preamble of the ETS. For this reason, MSHA has retained that analysis for the final rule, with one change as is noted below to address rock dusting in hard-to-reach areas, such as remote bleeder entries.

MSHA estimates that the final rule will result in total yearly costs for operators of underground bituminous coal mines of approximately \$26.3 million: \$0.3 million for mines with 1–19 employees; \$18.9 million for mines with 20–500 employees; and \$7.2 million for mines with 501 or more employees. The totals above do not sum due to rounding.

As is noted below, MSHA's cost estimates are based upon 2009 data. On April 14, 2010, West Virginia (WV) issued an Executive Order requiring that dust samples meet the NIOSH recommendation of 80% total incombustible content. MSHA did not consider the WV requirement in its analysis; thus the cost estimates attributable to the final rule may be overstated.

Derivation of Compliance Costs

Results from 26,576 intake rock dust samples collected by MSHA in 2009 show that over 75% of the samples had a total incombustible content (TIC) equal to or greater than 80%. While it is not possible to precisely determine the additional amount of rock dust needed based upon these samples, MSHA developed cost estimates using the following:

- MSHA assumed that the costs related to the 25% of samples that were below 80% TIC were the costs of going from 65% required under the existing standard to 80% TIC.
- Some samples that were below 80% TIC were below 65% TIC and others were above 65% TIC. To calculate costs, MSHA assumed that 25% of the mines in each size category would have to increase the TIC in the intakes from 65% to 80%, and developed costs accordingly.

MSHA estimates that approximately 18 mines with fewer than 20 employees (73 mines \times 25%); 83 mines with 20–500 employees (330 mines \times 25%); and 3 mines with more than 500 employees (12 mines \times 25%) will incur costs to comply with the final rule.

MSHA also estimates that these mines will require 115% more rock dust to comply with the final rule. The 115% increase in the amount of rock dust needed was calculated by solving the following set of equations:

- The initial amount of rock dust (RD_0) equals 65% of the initial amount of total dust (TD_0), as is specified in equation 1.

$$\text{Equation 1: } RD_0 = 0.65 \times TD_0$$

- The initial amount of rock dust (RD_0) plus the added rock dust (RD_{AD}) equals 80% of the initial amount of total dust (TD_0) plus the added rock dust (RD_{AD}) as is specified in equation 2.

$$\text{Equation 2: } RD_0 + RD_{AD} = 0.8 \times (TD_0 + RD_{AD})$$

Based upon the experience of MSHA's field staff, MSHA estimates the total costs associated with purchasing and applying rock dust to comply with the previous rock dust requirements were \$0.20 per ton of coal produced for mine operators with fewer than 20 employees and \$0.23 per ton of coal produced for mine operators with 20 or more employees. Therefore, the regulatory economic analysis for the ETS estimated additional compliance cost for the affected mines would be \$0.23 ($\$0.20 \times 115\%$) per ton of coal produced for mines with fewer than 20 employees and \$0.27 ($\$0.23 \times 115\%$) per ton of coal produced for mines with 20 or more employees.

In response to commenters' concerns, MSHA has increased the estimated cost to purchase and apply rock dust by 20 percent in this analysis to account for the additional cost related to applying rock dust in hard-to-reach areas. Thus the compliance cost for the affected mines will be \$0.28 ($\$0.23 \times 120\%$) per ton of coal produced for mines with fewer than 20 employees and \$0.32 ($\$0.27 \times 120\%$) per ton of coal produced for mines with 20 or more employees.

From these estimates, MSHA projects that the costs for purchasing and applying rock dust would increase by \$26.3 million per year due to the final rule. Table 3 shows that, disaggregated by mine size, yearly costs will be approximately: \$0.3 million for mine operators with fewer than 20 employees; \$18.9 million for mine operators with 20–500 employees; and \$7.2 million for mine operators with more than 500 employees. The totals above do not sum due to rounding.

TABLE 3—PROJECTED COMPLIANCE COSTS BASED ON MINE SIZE AND ADDITIONAL ROCK DUST PER SHORT TON OF COAL PRODUCED

Mine size	Mine count	Average preliminary 2009 coal production (short tons) per mine	Additional rock dust costs per short ton of coal produced	Increase in yearly costs to apply rock dust to comply with final rule
1–19 Employees	18	68,121	\$0.276	\$338,000
20–500 Employees	83	716,526	0.317	18,853,000
501+ Employees	3	7,521,334	0.317	7,153,000
Total	104	.....	.....	26,344,000

E. Net Benefits

Since MSHA did not receive any comments in the net benefits analysis in the preamble of the ETS, the Agency has retained that analysis for the final rule. The only changes are due to the changes in the estimated costs discussed in the previous section.

This section presents a summary of the estimated net benefits of the final rule for informational purposes only. Under the Mine Act, MSHA is not required to use estimated net benefits as the basis for its decision.

MSHA based its estimates of the monetary values for the benefits associated with the final rule on relevant literature. To estimate the monetary values of these reductions in cases, MSHA performed an analysis of the imputed value of fatalities prevented based on a willingness-to-pay approach. This approach relies on the theory of compensating wage differentials (*i.e.*, the wage premium paid to workers to accept the risk associated with various jobs) in the labor market. A number of studies have shown a correlation between higher job risk and higher wages, suggesting that employees demand monetary compensation in return for incurring a greater risk of injury or fatality.

Viscusi and Aldy (2003) conducted an analysis of studies that use a willingness-to-pay methodology to estimate the imputed value of life-saving programs (*i.e.*, meta-analysis) and found that each fatality prevented was valued at approximately \$7 million and each lost work-day injury was approximately \$50,000 in 2000 dollars. Using the GDP Deflator (U.S. Bureau of Economic Analysis, 2010), this yields an estimate of \$8.7 million for each fatality prevented and \$62,000 for each injury prevented in 2009 dollars. This value of a statistical life (VSL) estimate is within the range of the substantial majority of such estimates in the literature (\$1 million to \$10 million per statistical

life), as discussed in OMB Circular A–4 (OMB, 2003).

Although MSHA is using the Viscusi and Aldy (2003) study as the basis for monetizing the expected benefits of the final rule, the Agency does so with several reservations, given the methodological difficulties involved in estimating the compensating wage differentials (see Hintermann *et al.*, 2008). Furthermore, these estimates pooled across different industries may not capture the unique circumstances faced by coal miners. For example, some have suggested that VSL models be disaggregated to account for different levels of risk, as might occur in coal mining (Sunstein, 2004). In addition, coal miners may have few options of alternative employers and in some cases only one employer (near-monopsony or monopsony) that may depress wages below those in a more competitive labor market.

MSHA recognizes that monetizing the value of a statistical life is difficult and involves uncertainty and imprecision. In the future, MSHA plans to work with other agencies to refine the approach taken in this final rule.

Based upon the estimated prevention of 1 to 1.5 deaths per year and 1 injury every 4 years, the final rule will result in monetized benefits of approximately \$8.7 to 13.1 million per year. As noted above, MSHA believes that the final rule may prevent additional injuries; however, due to data limitations, quantification is not possible and they have not been included in the monetized benefits.

In addition to the injuries and fatalities prevented, MSHA anticipates that savings to operators will result from the final rule preventing or reducing the severity of explosions. As noted above, 6 explosions (about 0.23 per year) involving fatalities occurred in the 26 year period 1976 to 2001 and 4 explosions (about 0.17 per year) that did not involve any fatalities or injuries occurred in the 24 year period 1985 through 2008. MSHA estimates that the

final rule will prevent or reduce the severity of about one explosion every two and a half years.

Explosions can result in tremendous costs to a mine operator. MSHA estimates that the time to recover a mine after an explosion is a minimum of 8 weeks. Factors such as lost wages, lost production, rehabilitation, payment for the mine rescue teams and other staff, and miscellaneous expenses could result in costs that range between \$2 and \$7 million, depending on the extent of the explosion and the size of the mine.

Additional costs include lost equipment, which could run into the millions of dollars. For example, the cost of a set of advancing type mining equipment (continuous mining machine, roof bolting machine, shuttle car, scoop and power center) would be approximately \$8 million while the cost of a longwall unit would be approximately \$200 million. Replacing the electric and waterlines, rails, roof supports, pumps, and power centers could add a couple of million dollars more to costs.

If a mine operator is unable to reopen the mine after an explosion like some of the mines examined by MSHA, costs will vary depending on the amount of recoverable reserves. The anticipated cost of lost reserves could range from a few million dollars for a small mine to in excess of hundreds of millions of dollars for a large mine.

Based upon these values, MSHA estimates that preventing or reducing the severity of a typical explosion in an underground coal mine will save the operator approximately \$15 to \$40 million in direct costs (*e.g.*, mine rescue, wages and equipment). Based on one explosion every two and a half years, MSHA estimates that the final rule will result in annual savings to operators of between \$6 million (\$15 million per explosion \times 0.4 explosions per year) and \$16 million (\$40 million per explosion \times 0.4 explosions per year) depending upon the size of the mine and severity

of the explosion. In addition, MSHA believes that the final rule will prevent operator losses resulting from the inability to recover coal reserves,

although MSHA has not quantified these savings due to the imprecision of the data. Furthermore, MSHA's average estimate of 1 to 1.5 deaths prevented a

year cannot fully reflect the impact of preventing a given explosion or series of explosions, since each would be unique in terms of its impacts.

TABLE 4—MONETIZED NET BENEFITS
[Millions of 2009 dollars]

Yearly fatalities and injuries avoided	Yearly cost to apply additional rock dust	Yearly savings from reducing explosions	Annual net benefits
\$8.7 to \$13.1	\$26.3	\$6 to \$16	- 11.6 to 2.8.

Note: The final rule is targeted at the prevention of explosions, which are rare but catastrophic events. The net benefits, which must be estimated on an annual basis, do not necessarily reflect the impact of preventing a given explosion or series of explosions, since each would be unique in terms of its impacts.

IV. Feasibility

MSHA did not receive any comments on the feasibility analysis presented in the preamble of the ETS. The Agency concludes that the requirements of the final rule are technologically and economically feasible.

A. Technological Feasibility

MSHA concludes that this final rule is technologically feasible. The final rule is not technology-forcing. The benefits of rock dusting have been known for at least a century. Mine operators have been required to comply with the Coal Act, Mine Act, and ETS rock dusting requirements in 30 CFR 75.403, collectively for more than 40 years. The final rule adopts the ETS requirement for total incombustible content of dust in the mine. The final rule does not require operators to make any innovations in existing equipment or techniques used to rock dust.

B. Economic Feasibility

MSHA also concludes that this final rule is economically feasible. The U.S. underground bituminous sector produced an estimated 331,682,552 short tons of coal in 2009. Using the 2009 price of underground coal of \$55.77 per short ton, and estimated 2009 coal production in tons, underground coal revenues are estimated to be approximately \$18.5 billion. MSHA estimated the yearly compliance costs of the final rule to be \$26.3 million, which is 0.14 percent of revenues (\$26.3 million/\$18.5 billion) for underground bituminous coal mines. MSHA has traditionally used a revenue screening test—whether the yearly compliance costs of a regulation are less than 1 percent of revenues—to establish presumptively that compliance with the regulation is economically feasible for the mining community.

V. Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act (SBREFA)

Pursuant to the Regulatory Flexibility Act (RFA) of 1980, as amended by SBREFA, MSHA has analyzed the impact of the final rule on small businesses. Based on that analysis, MSHA has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification under the Regulatory Flexibility Act at 5 U.S.C. 605(b) that the final rule will not have a significant economic impact on a substantial number of small entities. The factual basis for this certification is presented below.

A. Definition of a Small Mine

Under the RFA, in analyzing the impact of the final rule on small entities, MSHA must use the Small Business Administration (SBA) definition for a small entity or, after consultation with the SBA Office of Advocacy, establish an alternative definition for the mining industry by publishing that definition in the **Federal Register** for notice and comment. MSHA has not taken such an action and is required to use the SBA definition. The SBA defines a small entity in the mining industry as an establishment with 500 or fewer employees.

In addition to examining small entities as defined by SBA, MSHA has also looked at the impact of this final rule on underground bituminous coal mines with fewer than 20 employees, which MSHA and the mining community have traditionally referred to as “small mines.” These small mines differ from larger mines not only in the number of employees, but also in economies of scale in material produced, in the type and amount of production equipment, and in supply inventory. The costs of complying with the final rule and the impact of the final

rule on small mines will also be different. It is for this reason that small mines are of special concern to MSHA.

MSHA concludes that it can certify that the final rule will not have a significant economic impact on a substantial number of small entities that are covered by this final rule. The Agency has determined that this is the case both for mines with fewer than 20 employees and for mines with 500 or fewer employees.

B. Factual Basis for Certification

MSHA initially evaluates the impacts on “small entities” by comparing the estimated compliance costs of a rule for small entities in the sector affected by the rule to the estimated revenues for the affected sector. When estimated compliance costs are less than one percent of the estimated revenues, the Agency believes it is generally appropriate to conclude that there is no significant economic impact on a substantial number of small entities. When estimated compliance costs exceed one percent of revenues, MSHA investigates whether a further analysis is required.

For underground bituminous coal mines, the estimated preliminary 2009 production was 4,972,836 short tons for mines that had fewer than 20 employees and 241,426,542 short tons for mines that had 500 or fewer employees. Using the 2009 price of underground coal of \$55.77 per short ton and total 2009 coal production in short tons, underground coal revenues are estimated to be approximately \$277.3 million for mines employing fewer than 20 employees and \$13.4 billion for mines employing 500 or fewer employees. The yearly costs of the final rule for mines that have fewer than 20 employees is 0.12 percent (\$338,000/\$277.3 million) of annual revenues, and the yearly costs of the final rule for mines that have 500 or fewer employees is 0.14 percent (\$19.2 million/\$13.5 billion) of annual

revenues. Using either MSHA's traditional definition of a small mine (one having fewer than 20 employees) or SBA's definition of a small mine (one having 500 or fewer employees), the yearly costs for underground bituminous coal mines to comply with the final rule will be less than 1 percent of estimated revenues. Accordingly, MSHA has certified that the final rule will not have a significant impact on a substantial number of small entities that are covered by the final rule.

VI. Paperwork Reduction Act of 1995

The final rule contains no additional information collections under the Paperwork Reduction Act.

VII. Other Regulatory Considerations

A. The Unfunded Mandates Reform Act of 1995

MSHA has reviewed the final rule under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). MSHA has determined that the final rule does not include any federal mandate that may result in increased expenditures by State, local, or tribal governments; nor will it increase private sector expenditures by more than \$100 million in any one year or significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 requires no further Agency action or analysis.

B. Executive Order 13132: Federalism

The final rule does not have "federalism implications" because it will not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Accordingly, under E.O. 13132, no further Agency action or analysis is required.

C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires agencies to assess the impact of Agency action on family well-being. MSHA has determined that the final rule will have no effect on family stability or safety, marital commitment, parental rights and authority, or income or poverty of families and children. The final rule impacts only the underground bituminous coal mine industry. Accordingly, MSHA certifies that the final rule will not impact family well-being.

D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

The final rule does not implement a policy with takings implications. Accordingly, under E.O. 12630, no further Agency action or analysis is required.

E. Executive Order 12988: Civil Justice Reform

The final rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, the final rule will meet the applicable standards provided in section 3 of E.O. 12988, Civil Justice Reform.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The final rule will have no adverse impact on children. Accordingly, under E.O. 13045, no further Agency action or analysis is required.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The final rule does not have "tribal implications" because it will not "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." Accordingly, under E.O. 13175, no further Agency action or analysis is required.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to publish a statement of energy effects when a rule has a significant energy action (*i.e.*, it adversely affects energy supply, distribution or use). MSHA has reviewed this final rule for its energy effects because the final rule applies to the underground coal mining sector. Because the final rule will result in yearly costs of approximately \$26.3 million to the underground coal mining industry, relative to annual revenues of \$18.5 billion in 2009, MSHA has concluded that it is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Accordingly, under this analysis, no

further Agency action or analysis is required.

VIII. References

- Cashdollar K. 1996. Coal dust explosibility. *J Loss Prev Process Ind* 9(1):65-76.
- Cashdollar K, Hertzberg M. 1989. Laboratory study of rock dust inerting requirements: effects of coal volatility, particle size, and methane addition. In: *Proceedings of the 23rd International Conference of Safety in Mines Research Institutes* (Washington, DC, September 11-15, 1989). Pittsburgh, PA: U.S. Department of the Interior, Bureau of Mines, pp. 965-977.
- Cashdollar K, Sapko M, Weiss E, Harris M, Man C, Harteis S, Green G. 2010. Recommendations for a New Rock Dusting Standard to Prevent Coal Dust Explosions in Intake Airways. Report of Investigations 9679. National Institute for Occupational Safety and Health, Pittsburgh Research Laboratory, Pittsburgh, PA, May. 59 Pages.
- Department of Labor, Mine Safety and Health Administration (DOL/MSHA). 1982. Report of Investigation. Underground Coal Mine Dust Explosion. No. 11 Mine (ID No. 15-02290). Adkins Coal Company. Kite, Knott County, Kentucky. December 7, 1981. U.S. Department of Labor. 60 Pages. [Missing Appendices I through L]
- Department of Labor, Mine Safety and Health Administration (DOL/MSHA). 1982. Report of Investigation. Underground Coal Mine Dust Explosion. No. 1 Mine (ID No. 15-12624). RFH Coal Company. Craynor, Floyd County, Kentucky. January 20, 1982. U.S. Department of Labor. 53 Pages. [Missing Appendices J through M]
- Department of Labor, Mine Safety and Health Administration (DOL/MSHA). 1993. Report of Investigation. Underground Coal Mine Explosions. Scotia Mine I.D. No. 15-02055. Scotia Coal Company. Ovenfork, Letcher County, Kentucky. March 9 and 11, 1976. U.S. Department of Labor. August 11, 1993. 229 Pages.
- Department of Labor, Mine Safety and Health Administration (DOL/MSHA). 1993. Report of Investigation. December 7, 1992. Underground Coal Mine Explosion. #3 Mine ID. No. 44-06594. Southmountain Coal Co., Inc. Norton, Wise County, Virginia. U.S. Department of Labor. May 6, 1993. 67 Pages.
- Department of Labor, Mine Safety and Health Administration (DOL/MSHA). 1995. Report of Investigation. May 11, 1994. Underground Coal Mine Explosion. No. 9 Mine I.D. No. 15-16418. Day Branch Coal Company, Inc. Pathfork, Harlan County, Kentucky. U.S. Department of Labor, May 26, 1995. 49 Pages. [Missing Appendix H].
- Department of Labor, Mine Safety and Health Administration (DOL/MSHA). 2002. Report of Investigation. Fatal Underground Coal Mine Explosions. September 23, 2001. No. 5 Mine Jim Walter Resources, Inc. Brookwood, Tuscaloosa County, Alabama. ID No. 01-01322. U.S. Department of Labor, CAI-

- 2001–20 through 32, December 11, 2002. 125 Pages.
- Department of Labor, Mine Safety and Health Administration (DOL/MSHA). 2010. Emergency Temporary Standard—Maintenance of Incombustible Content of Rock Dust in Underground Coal Mines (75 FR 57849), September 23, 2010.
- Department of Labor, Mine Safety and Health Administration (DOL/MSHA). 2010. Program Information Bulletin No. P10–18, Accumulation of Combustible Materials and Rock Dust. September 21, 2010. 3 Pages.
- Department of Labor, Mine Safety and Health Administration (DOL/MSHA). 2010. Procedure Instruction Letter No. 10–V–16, Accumulation of Combustible Materials and Rock Dust. October 14, 2010. 3 Pages.
- Dubaniewicz T. 2009. From Scotia to Brookwood, fatal US underground coal mine explosions ignited in intake air courses. *J Loss Prev Process Ind* 22(1):52–58.
- Hintermann B, Alberini A, Markandya A. 2010. Estimating the Value of Safety with Labor Market Data: Are the Results Trustworthy? *Applied Economics* 42(9):1085–1100.
- National Institute for Occupational Safety and Health (NIOSH). 2006. Float Coal Dust Explosion Hazards. *NIOSH Technology News* No. 515, April. DHHS (NIOSH) Publication No. 2006–125. 2 Pages.
- Office of Management and Budget (OMB). 1992. Circular No. A–94, “Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs,” October 29, 1992. 22 Pages.
- Sunstein C. 2004. Valuing Life: A Plea for Disaggregation. *Duke Law Journal*, 54 (November 2004): 385–445.
- U.S. Bureau of Economic Analysis. 2010. National Income and Product Accounts Table: Table 1.1.9. Implicit Price Deflators for Gross Domestic Product [Index numbers, 2005 = 100]. Revised May 27, 2010. 3 Pages. <http://www.bea.gov/national/nipaweb/TableView.asp?SelectedTable=13&Freq=Qtr&FirstYear=2006&LastYear=2008>
- U.S. Department of Energy (DOE). 2010. Energy Information Administration (EIA, 2010). Annual Coal Report 2009, Table 28. Revised October 1, 2010. 1 Page.
- Viscusi W, Aldy J. 2003. The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World. *Journal of Risk and Uncertainty* 27:5–76.

IX. Final Rule—Regulatory Text

List of Subjects in 30 CFR Part 75

Mine safety and health, Underground coal mines, Combustible Materials and Rock Dusting.

Dated: June 15, 2011.

Joseph A. Main,

Assistant Secretary of Labor for Mine Safety and Health.

Chapter I of Title 30, part 75 of the Code of Federal Regulations is amended as follows:

PART 75—SAFETY STANDARDS FOR UNDERGROUND COAL MINES

■ 1. The authority citation for part 75 is revised to read as follows:

Authority: 30 U.S.C. 811.

■ 2. Section 75.403 is republished to read as follows:

§ 75.403 Maintenance of incombustible content of rock dust.

Where rock dust is required to be applied, it shall be distributed upon the top, floor, and sides of all underground areas of a coal mine and maintained in such quantities that the incombustible content of the combined coal dust, rock dust, and other dust shall be not less than 80 percent. Where methane is present in any ventilating current, the percent of incombustible content of such combined dust shall be increased 0.4 percent for each 0.1 percent of methane.

[FR Doc. 2011–15247 Filed 6–20–11; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0492]

Drawbridge Operation Regulations; Connecticut River, Old Lyme, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Amtrak Railroad Bridge at mile 3.4, across the Connecticut River at Old Lyme, Connecticut. The deviation is necessary to facilitate scheduled maintenance at the bridge. This deviation allows the bridge to remain in the closed position during the deviation period.

DATES: This deviation is effective from 12:01 a.m. through 6 a.m. on June 23, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–0492 and are available online at <http://www.regulations.gov>, inserting USCG–2011–0492 in the “Keyword” and then clicking “Search”. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation,

West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Judy Leung-Yee, Project Officer, First Coast Guard District, judy.k.leung-yee@uscg.mil, or telephone (212) 668–7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Amtrak Railroad Bridge, across the Connecticut River at mile 3.4, at Old Lyme, Connecticut, has a vertical clearance in the closed position of 19 feet at mean high water and 22 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.205(b).

The waterway users are commercial and recreational vessels.

The owner of the bridge, National Railroad Passenger Company (Amtrak), requested a temporary deviation from the regulations to facilitate repair of the main gear box and secondary reducer at the bridge.

Under this temporary deviation the Amtrak Railroad Bridge may remain in the closed position between 12:01 a.m. and 6 a.m. on June 23, 2011. Vessels that can pass under the bridge in the closed position may do so at any time.

The local marinas and commercial users were notified. No objections were received.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 8, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–15351 Filed 6–20–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–0481]

Drawbridge Operation Regulations; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, Nassau, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Long Beach Bridge at mile 4.7, across Reynolds Channel at Nassau, New York. The deviation is necessary to facilitate public safety for a public event. This deviation allows the bridge to remain in the closed position for two hours.

DATES: This deviation is effective from 10 p.m. on June 25, 2011, through 11:59 p.m. on June 26, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG-2011-0481 and are available online at <http://www.regulations.gov>, inserting USCG-2011-0481 in the "Keyword" and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Judy Leung-Yee, Project Officer, First Coast Guard District, judy.k.leung-yee@uscg.mil, or telephone (212) 668-7165. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION: The Long Beach Bridge, across Reynolds Channel at mile 4.7, at Nassau, New York, has a vertical clearance in the closed position of 20 feet at mean high water and 24 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.799(g).

The waterway users are mostly commercial operators.

The owner of the bridge, Nassau County Department of Public Works, requested a temporary deviation from the regulations to facilitate public safety during a public event, the Annual Salute to Veterans Fireworks Display on Saturday June 25, 2011.

Under this temporary deviation the Long Beach Bridge may remain in the closed position between 10 p.m. and 11:59 p.m. on June 25, 2011. In the event of inclement weather on the scheduled date the fireworks display will occur between 10 p.m. and 11:59 p.m. on June 26, 2011. Vessels that can pass under the bridge in the closed position may do so at any time.

The commercial users were notified. No objections were received.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 8, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011-15352 Filed 6-20-11; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R1-ES-2009-0050; 92220-1113-0000-C3]

RIN 1018-AW60

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Bull Trout in the Clackamas River Subbasin, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), jointly with the State of Oregon, and in cooperation with the U.S. Forest Service, Mt. Hood National Forest (USFS), National Marine Fisheries Service (NMFS), and Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO), will establish a nonessential experimental population (NEP) of bull trout (*Salvelinus confluentus*) in the Clackamas River and its tributaries in Clackamas and Multnomah Counties, Oregon, under section 10(j) of the Endangered Species Act of 1973, as amended (Act). The geographic boundaries of the NEP include the entire Clackamas River subbasin as well as the mainstem Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel. The best available data indicate that reintroduction of bull trout to the Clackamas River subbasin is biologically feasible and will promote the conservation of the species.

DATES: This rule is effective June 21, 2011.

ADDRESSES: This final rule, along with the public comments, Environmental Assessment (EA), and Finding of No

Significant Impact (FONSI), is available on the Internet at <http://www.regulations.gov>. Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are also available for inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266; (telephone 503-231-6179).

FOR FURTHER INFORMATION CONTACT: Chris Allen at the address listed above. If you use a telecommunication device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Statutory and Regulatory Framework

The 1982 amendments to the Act (16 U.S.C. 1531 *et seq.*) included the addition of section 10(j) which allows for the designation of reintroduced populations of listed species as "experimental populations." Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population a population of endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range (but within its probable historical range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed).

Before authorizing the release as an experimental population of any population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find, by regulation, that such release will further the conservation of the species. In making such a finding, the Service uses the best scientific and commercial data available to consider: (1) Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere; (2) the likelihood that any such experimental population will become established and survive in the foreseeable future; (3) the relative effects that establishment of an experimental population will have on the recovery of the species; and (4) the extent to which the introduced population may be affected by existing or anticipated Federal or State actions or

private activities within or adjacent to the experimental population area.

Furthermore, as set forth in 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) must provide: (1) Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s); (2) a finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild; (3) management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate and/or contain the experimental population designated in the regulation from natural populations; and (4) a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land which may be affected by the establishment of an experimental population.

Under 50 CFR 17.81(f), the Secretary of the Interior (Secretary) may designate critical habitat as defined in section 3(5)(A) of the Act for an essential experimental population. In those situations where a portion or all of an essential experimental population overlaps with a natural population of the species during certain periods of the year, no critical habitat will be designated for the area of overlap unless implemented as a revision to critical habitat of the natural population for reasons unrelated to the overlap itself. No designation of critical habitat will be made for nonessential experimental populations.

Any population determined by the Secretary to be an experimental population will be treated as if it were listed as a threatened species for purposes of establishing protective

regulations with respect to that population. The protective regulations adopted for an experimental population will contain applicable prohibitions, as appropriate, and exceptions for that population.

Any experimental population designated for a listed species (1) determined not to be essential to the survival of that species and (2) not occurring within the National Park System or the National Wildlife Refuge System, will be treated for purposes of section 7 (other than subsection (a)(1) thereof) as a species proposed to be listed under the Act as a threatened species.

Any experimental population designated for a listed species that either (1) has been determined to be essential to the survival of that species, or (2) occurs within the National Park System or the National Wildlife Refuge System as now or hereafter constituted, will be treated for purposes of section 7 of the Act as a threatened species. Notwithstanding the foregoing, any biological opinion prepared pursuant to section 7(b) of the Act and any agency determination made pursuant to section 7(a) of the Act will consider any experimental and nonexperimental populations to constitute a single listed species for the purposes of conducting the analyses under such sections.

On December 9, 2009, the Service published: (1) A proposed rule in the **Federal Register** to establish a nonessential experimental population of bull trout in the Clackamas River subbasin, Oregon (74 FR 65045); and (2) a draft environmental assessment (EA) in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (74 FR 65045). This document analyzed the potential environmental impacts associated with the proposed reintroduction. We contacted interested parties including Federal and State agencies, local governments, scientific organizations, interest groups, and private landowners through a press release and related fact sheets, and e-mails. In addition, we notified the public and invited comments through news releases to local media outlets. The public comment period for the proposed rule and the draft EA closed on February 8, 2010.

Biological Information

The bull trout is a large native char found in the coastal and intermountain west of North America and is one of five species in the genus *Salvelinus* found in the United States (Bond 1992, p. 1). Bull trout have a slightly forked tail; yellow or cream-colored spots on their back;

yellow, orange, or pink spots on their side; and no black spots on their dorsal fin. Migratory adults commonly reach 24 inches (61 centimeters) or more (Goetz 1989, pp. 29–30; Pratt 1992, p. 8). The largest known specimen weighed 32 pounds (14.5 kilograms) (Simpson and Wallace 1982, p. 95).

The historical range of bull trout in the coterminous United States extended from the Canadian border south to the Jarbidge River in northern Nevada and from the Pacific Ocean inland to the Clark Fork River in western Montana and the Little Lost River in central Idaho. Genetic analyses have shown that bull trout in the coterminous United States are divided into major genetically differentiated (*e.g.*, evolutionary) groups or lineages (Spruell *et al.* 2003, p. 21; Ardren *et al.* 2010, In Press, p. 13; Taylor *et al.* 1999, p. 1162). At a coarse scale, these assessments have identified the existence of two distinct lineages: A “coastal” lineage and a “interior” lineage. The “coastal” lineage includes the Deschutes River and all of the Columbia River drainage downstream (including the Willamette Basin), as well as coastal streams in Washington, Oregon, and British Columbia. The “interior” lineage includes tributaries of the Columbia River upstream from the John Day River, including major river basins in northeastern Oregon, eastern Washington, Idaho, and northwestern Montana.

In a finer-scale analysis, the Service recently identified additional genetic units within the coastal and interior lineages (Ardren *et al.* 2010, In Press, p. 18). Based on a recommendation in the Service’s 5-year review of the species’ status (USFWS 2008, p. 45), the Service reanalyzed the 27 recovery units identified in the draft bull trout recovery plan (USFWS 2002) by utilizing, in part, genetic information from this finer-scale genetic analysis. In this examination, the Service applied relevant factors from the joint Service and NMFS Distinct Population Segment (DPS) policy (61 FR 4722; February 7, 1996) and subsequently identified six draft recovery units that contain assemblages of core areas that retain genetic and ecological integrity across the range of bull trout in the coterminous United States. These six draft recovery units were used to inform designation of critical habitat for bull trout by providing a context for deciding what habitats are essential for recovery (75 FR 63898; October 18, 2010). The six draft recovery units identified for bull trout in the coterminous United States include: Coastal, Klamath, Mid-Columbia, Columbia Headwaters, Saint Mary, and Upper Snake.

Bull trout exhibit both resident and migratory life-history strategies, although bull trout in the “coastal” lineage are largely migratory. Migratory bull trout spawn in tributary streams where juvenile fish rear for 1 to 4 years before migrating to either a lake (adfluvial form), river (fluvial form) (Fraleley and Shepard 1989, pp. 138–139; Goetz 1989, p. 24), or saltwater (anadromous form) to rear as subadults and to live as adults (Cavender 1978, p. 139; McPhail and Baxter 1996, p. 14; Washington Department of Fish and Wildlife (WDFW) *et al.* 1998, p. 2). Bull trout normally reach sexual maturity between age 4 and 7, and may live longer than 12 years. They are iteroparous (spawning more than once in a lifetime). Both consecutive-year and alternate-year spawning have been reported (Fraleley and Shepard 1989, p. 135). Preferred habitat consists of cold water, complex cover, stable channels, loose and clean gravel, and migratory corridors (Fraleley and Shepard 1989, pp. 137–139; Goetz, 1989, pp. 16–25).

The current distribution of bull trout in the lower Columbia River portion of the “coastal” lineage includes populations in the Deschutes, Hood, Lewis, Klickitat, and upper Willamette rivers. Throughout much of its historical range, the decline of bull trout has been attributed to habitat degradation and fragmentation, the blockage of migratory corridors, poor water quality, angler harvest, entrainment (the incidental withdrawal of fish and other aquatic organisms in water diverted out-of-stream for various purposes) into diversion channels and dams, and introduced nonnative species. Specific land and water management activities that may negatively impact bull trout populations and habitat, if not implemented in accordance with best management practices, include the operation of dams and other diversion structures, forest management practices, livestock grazing, agriculture, agricultural diversions, road construction and maintenance, mining, and urban and rural development (Beschta *et al.* 1987, pp. 221–224; Chamberlain *et al.* 1991, pp. 199–200; Furniss *et al.* 1991, pp. 297–302; Meehan and Bjornn 1991, pp. 483–517; Nehlsen *et al.* 1991, p. 16; Craig and Wissmar 1993, p. 18; Frissell 1993, p. 351; McIntosh *et al.* 1994, pp. 47–48; Wissmar *et al.* 1994, p. 28; Montana Bull Trout Scientific Group (MBTSG) 1995a [p. 14], 1995b [p. 10], 1995c [p. 13], 1995d [p. 21], 1995e [p. 13], 1996a [p. 12], 1996b [p. 9], 1996c [p. 12], 1996d [p. 11], 1996e [p. 12], 1996f [p. 10]; Light *et al.* 1996, pp. 9–11; U.S.

Department of Agriculture (USDA) and U.S. Department of the Interior (USDI) 1995 [pp. 70–71], 1996 [pp. 106–107, 111], 1997 [pp. 132–154]).

The historical distribution of bull trout in the Clackamas River subbasin likely extended from the lower Clackamas River upstream to headwater spawning and rearing areas (Shively *et al.* 2007, Ch. 1, pp. 10–12). It is possible that bull trout from the Clackamas River migrated to the upper Willamette River above Willamette Falls or to lower Columbia River tributaries (Zimmerman 1999, p. 17); however, it is unlikely that bull trout historically occupied habitat upstream of waterfall barriers known to impede upstream movement of anadromous salmon and steelhead in the Clackamas River.

The last documented bull trout observation in the Clackamas River subbasin was in 1963 (Stout 1963, p. 97). Due to geographic distance to extant bull trout populations in other subbasins, natural recolonization of the Clackamas River subbasin is extremely unlikely (USFWS 2002, Ch. 5, p. 9). Extirpation was likely caused by many of the factors that led to the decline in the species across its range, including migration barriers from hydroelectric and diversion dams, direct and incidental harvest in sport and commercial fisheries, targeted eradication through bounty fisheries (currently known as “sport reward” programs), and habitat and water quality degradation from forest management and agricultural activities not in accordance with best management practices (Shively *et al.* 2007, Ch. 1, pp. 18–22).

Relationship of the Experimental Population to Recovery Efforts

On November 1, 1999, we published a final rule to list bull trout within the coterminous United States as threatened under the Act (64 FR 58910). This final rule served to consolidate the five separate DPS listings into one listing throughout the species’ entire range in the coterminous United States. We published notices of availability of draft recovery plans for the Columbia River, Klamath River, and St. Mary-Belly River segments on November 29, 2002 (67 FR 71439), and the Coastal Puget Sound and Jarbidge River segments on July 1, 2004 (69 FR 39950 and 69 FR 39951, respectively). We published a revised final rule on October 18, 2010 (75 FR 63898), designating critical habitat for bull trout in the coterminous United States. We anticipate publishing a draft revised recovery plan for bull trout in the coterminous United States in 2011, and a final recovery plan in 2012. The

recovery objectives from the 2002 draft recovery plan are:

(1) Maintain current distribution of bull trout within core areas as described in recovery unit chapters and restore distribution where recommended in recovery unit chapters;

(2) Maintain stable or increasing trend in abundance of bull trout;

(3) Restore and maintain suitable habitat conditions for all bull trout life-history stages and strategies; and

(4) Conserve genetic diversity and provide opportunity for genetic exchange.

As noted above in *Biological Information*, new draft recovery units were identified in the October 2010 bull trout critical habitat final rule (75 FR 63898). We anticipate these 6 recovery units will replace the 27 recovery units previously identified in our 2002 draft recovery plan (67 FR 71439; November 29, 2002), and that these new units will be incorporated into the revised draft recovery plan expected to be published for public review and comment in 2012. The recovery criteria specific to the 27 recovery units identified in the 2002 draft recovery plan continue to inform demographic recovery targets at the core area scale. Therefore, the criteria identified below for what was then described as the Willamette River Recovery Unit in the 2002 draft recovery plan (USFWS 2002, Ch. 5 pp. 7–8) are still relevant:

(1) Distribution criteria will be met when bull trout are distributed among five or more local populations in the recovery unit: four in the Upper Willamette River core area and one in the Clackamas River core habitat.

(2) Abundance criteria will be met when an estimated abundance of adult bull trout is from 900 to 1,500 or more individuals in the Willamette River Recovery Unit, distributed in each core area as follows: 600 to 1,000 in the Upper Willamette core area and 300 to 500 in the Clackamas River core habitat.

(3) Trend criteria will be met when adult bull trout exhibit stable or increasing trends in abundance in the Willamette River Recovery Unit, based on a minimum of 10 years of monitoring data.

(4) Connectivity criteria will be met when migratory forms are present in all local populations and when intact migratory corridors among all local populations in core areas provide opportunity for genetic exchange and diversity.

Establishment of an experimental population of bull trout in the Clackamas River will help to achieve distribution in the Clackamas River core habitat (recovery criterion 1 and

recovery objective 1) and will increase abundance of adult bull trout in the Willamette River basin (recovery criterion 2 and recovery objective 2 from the 2002 draft recovery plan).

Is the experimental population essential or nonessential?

When we establish experimental populations under section 10(j) of the Act, we must determine whether such a population is essential to the continued existence of the species in the wild. Although the experimental population will contribute to the recovery of the bull trout in the Willamette River basin, it is not essential to the continued existence of the species in the wild. Bull trout populations are broadly distributed, occurring in 121 core areas in 5 western States, and the species' continued existence is dependent upon conserving a number of interacting populations that are well distributed throughout its range. Because the donor stock for the reintroduction will come from a wild population of bull trout, the reintroduced population will not possess markedly divergent genetic components or adaptive traits. Furthermore, the Clackamas River is not a unique or unusual ecological setting or geographical context for bull trout. Bull trout occur in other portions of the Willamette River basin and in other nearby tributaries to the Columbia River. Therefore, as required by 50 CFR 17.81(c)(2), we find that the experimental population is not essential to the continued existence of the species in the wild, and we hereby designate the experimental population in the Clackamas River as a nonessential experimental population (NEP).

Location of the Nonessential Experimental Population

The NEP area includes the entire Clackamas River subbasin as well as the mainstem Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel. The Willamette River's confluence with the Columbia River occurs at river mile (RM) 101, near the City of Portland. A secondary channel of the Willamette River, named the Multnomah Channel, branches off the Willamette River approximately 3 river miles (5 river kilometers) upstream from its confluence with the Columbia River. This secondary channel runs approximately 20 river miles (32 river kilometers) along the west side of Sauvie Island before joining the Columbia River at RM 86 near the town of St. Helens. The NEP boundary extends down the Multnomah Channel

to its confluence with the Columbia River, as well as the mainstem Willamette River, from Willamette Falls to its confluence with the Columbia River.

Under this final rule, the Service will release bull trout into areas of suitable spawning and rearing habitat in the Clackamas River subbasin. The portion of the subbasin currently containing these areas is limited to the mainstem Clackamas River and its tributaries in the upper headwaters of the subbasin, upstream of the Collawash River confluence. This portion of the subbasin, referred to as the upper Clackamas River subbasin, contains a total of 70.1 river miles (112.8 river kilometers) of suitable spawning and rearing habitat. The amount and characteristics of habitat in the Clackamas River subbasin compare favorably to other river systems in the lower Columbia River with extant bull trout populations (*e.g.*, Lewis, McKenzie, and Deschutes rivers) (Shively *et al.* 2007, Ch. 2, p. 40).

Section 10(j) of the Act requires that an experimental population be geographically separate from wild populations of the same species. The nearest wild bull trout populations to the Clackamas River are located in the following tributaries of the lower Columbia River: The Lewis (RM 84), Hood (RM 165), and Deschutes (RM 200) rivers. Because fluvial populations of bull trout tend to migrate, individual fish from these populations may seasonally occupy the mainstem of the lower Columbia River. Although we have no records of bull trout in the mainstem Willamette River, given our understanding of bull trout ecology in other river systems, it is likely that, historically, bull trout seasonally occupied the mainstem Willamette River. If a reintroduction of bull trout to the Clackamas River is successful, it is possible that a small percentage of adult bull trout will migrate to, and overwinter in, the mainstem Willamette River, between Willamette Falls and its points of confluence with the Columbia River, including Multnomah Channel. Should any bull trout be found in the Willamette River within the NEP boundary, the Service will assume the fish to be part of the reintroduced population, unless the fish is tagged or otherwise known to be from another population.

It is unlikely that reintroduced bull trout will migrate outside of the NEP boundary into the Columbia River or upstream of Willamette Falls in the Willamette River due to the significant distance to spawning and rearing habitats in the upper Clackamas River.

Bull trout found outside of the NEP boundary but known to be part of the NEP will assume the status of bull trout within the geographic area in which they are found. Although Willamette Falls and the confluence points of the Willamette and Columbia Rivers are not absolute boundaries, the NEP is geographically separate from other wild bull trout populations due to geographic distance.

Likelihood of Population Establishment and Survival

The Service, USFS, State of Oregon (hereafter referred to as either the State of Oregon or the Oregon Department of Fish and Wildlife (ODFW)), and other major stakeholders established the Clackamas River Bull Trout Working Group (CRBTWG) to assess the feasibility of bull trout reintroductions. In 2007, the CRBTWG completed the Clackamas River Bull Trout Reintroduction Feasibility Assessment (Feasibility Assessment), a scientifically rigorous examination of habitat suitability and projected viability of a reintroduced population (Shively *et al.* 2007). The Feasibility Assessment indicates that there is a reasonable likelihood that reintroduced bull trout will survive and reestablish in the upper portion of the Clackamas River, from North Fork Reservoir to the headwaters. Specifically, the CRBTWG concludes:

- (1) There is a high level of confidence that bull trout have been locally extirpated from the Clackamas River subbasin;
- (2) The causes for their decline have been sufficiently mitigated;
- (3) High-quality habitat is available in sufficient amounts;
- (4) Nearby donor stocks are unlikely to naturally recolonize;
- (5) Suitable donor stocks are available that can withstand extraction of individuals;
- (6) Nonnative brook trout presence is restricted to a small portion of the suitable habitat and not a likely threat; and
- (7) A diverse and abundant fish assemblage would serve as a sufficient prey base with no obvious threats posed by bull trout to these species (Shively *et al.* 2007, Ch. 5, pp. 3–4).

Based on this assessment, reintroduced bull trout are likely to become established and persist in the Clackamas River subbasin. Copies of the Feasibility Assessment can be obtained: (1) Online at <http://www.fws.gov/oregonfwo/Species/Data/BullTrout/ReintroductionProject.asp>, (2) at <http://www.regulations.gov>, or (3) in person, by appointment, during normal business hours, at the Oregon Fish and Wildlife

Office (see **FOR FURTHER INFORMATION CONTACT**).

Addressing Causes of Extirpation

Investigating the causes for decline and extirpation of bull trout in the Clackamas River is necessary to understand whether the threats have been sufficiently curtailed such that reintroduction efforts are likely to be successful. The CRBTWG identified the primary threats to be hydroelectric dams (passage and screening), forest management (*i.e.*, lack of aquatic habitat protection), and fisheries management (particularly sport fishing upstream of North Fork Dam) (Shively *et al.* 2007, Ch. 1, pp. 22–23). The changes in threats since extirpation of bull trout in the Clackamas River subbasin are explained below in more detail.

Diversion dams that would impede bull trout migration were present in the late 1800s and early 1900s, but no longer exist in the lower Clackamas River subbasin. Within bull trout historical habitat in the Clackamas River subbasin there are three existing dams owned and operated by Portland General Electric (PGE). Beginning in the late 1990s, PGE began Federal relicensing proceedings for its hydroelectric dams in the Clackamas River subbasin. In their final license application to the Federal Energy Regulatory Commission (FERC) and in an accompanying Settlement Agreement among more than 30 local, State, Federal, and Tribal governments, nongovernmental organizations, and other interested stakeholders, PGE proposed to make several upstream and downstream fish passage improvements for the three dams along the mainstem Clackamas River. One improvement, which is already completed, is the reconstruction of the River Mill Dam fish ladder. Other improvements include upgrades to the downstream fish collection facility and bypass at North Fork Dam, construction of a new fish trap and handling facility at the North Fork fishway, and new downstream fish passage facilities at River Mill Dam (Shively *et al.* 2007, Ch. 1, p. 23). No additional changes or protections regarding the operation and maintenance of the Clackamas River Hydroelectric Project are necessary to support a successful reintroduction of bull trout in the Clackamas River subbasin.

The majority of lands in the upper portion of the Clackamas River subbasin are USFS- and Bureau of Land Management (BLM)-administered public forest lands. These lands are managed in accordance with the Mt. Hood National Forest Land and Resource Management

Plan (USFS 1990) or the Salem District BLM Resource Management Plan (USDI 1995), respectively, as amended by the 1994 Northwest Forest Plan (USDA and USDI 1994). The 1994 Northwest Forest Plan established an Aquatic Conservation Strategy (ACS) with protective measures, standards and guidelines, and land allocations to maintain and restore at-risk fish species, including bull trout. The ACS Riparian Reserve land allocation extends a minimum of 300 feet (91.4 meters) on both sides of all fish-bearing streams and prohibits scheduled timber harvest. These plans, along with the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11) that established several new wilderness areas in the upper Clackamas River watershed, provide substantial protections for watersheds and aquatic habitats on USFS- and BLM-administered public lands in the upper subbasin. No additional changes or protections regarding forest management activities on public or non-public forest lands are necessary to support a successful reintroduction of bull trout in the Clackamas River subbasin (Shively *et al.* 2007, Ch. 1, pp. 124–125).

When the NMFS listed salmon and steelhead in the Clackamas River as threatened under the Act (64 FR 14308, March 24, 1999; 70 FR 37160, June 28, 2005; 71 FR 834, January 5, 2006), fisheries management practices for the portion of the Clackamas River subbasin upstream of North Fork Reservoir changed substantially. For example, stocking of catchable rainbow trout within the Clackamas River has been discontinued altogether along the mainstem and tributaries upstream of North Fork Reservoir, and current sport fishing regulations now require catch and release of all native trout caught in the Clackamas River subbasin. Additionally, angling is restricted to the use of artificial flies and lures upstream of North Fork Reservoir. All waters in the Willamette Zone for the State of Oregon's sport fishing regulations are closed to angling for bull trout. Beginning in 2003, ODFW eliminated the stocking of nonnative brook trout in lakes with outlets to streams in the upper Clackamas River subbasin that provide suitable bull trout spawning and rearing habitat. With these significant changes in angling regulations and stocking of nonnative brook trout, no additional changes to angling regulations and stocking in the upper portion of the subbasin are necessary to support a successful reintroduction of bull trout (Shively *et al.* 2007, Ch. 1, pp. 24).

Donor Stock Assessment and Effects on Donor Populations

A donor stock should be composed of fish that most closely resemble the bull trout that historically inhabited the Clackamas River (*e.g.*, genotype, phenotype, behavior, and life-history expression). However, because little is known about the biology and evolutionary history of bull trout that historically occupied the Clackamas River, and no genetic material is available for analysis, the CRBTWG was limited to an assessment of biological information from other local populations, existing studies of the evolution and biogeography of bull trout, information derived from historical harvest data from the Clackamas River, and recent regional bull trout genetic analyses.

By exploring issues associated with life-history strategy, metapopulation dynamics, biogeography, and genetic considerations, the CRBTWG identified bull trout populations in the “coastal” lineage as the best source for a donor population (see *Biological Information* above). Any of the “coastal” lineage bull trout populations are likely to carry the genetic material to preserve and protect the “coastal” lineage regardless of localized and specific adaptations. Although these local adaptations are important, each of the populations is likely to contain the evolutionary potential that is characteristic of the “coastal” evolutionary lineage. However, in a further refinement, the CRBTWG determined that donor populations from lower Columbia River tributaries would be most appropriate due to their geographic proximity to the historical bull trout population in the Clackamas River. The potential lower Columbia River donor populations of bull trout include fish in five river basins: The Willamette River, Hood River, Lewis River, Deschutes River, and Klickitat River basins (Shively *et al.* 2007, Ch. 3, pp. 8–14).

Specific benchmarks have been developed concerning the minimum bull trout population size necessary to maintain genetic variation important for short-term fitness and long-term evolutionary potential. Rieman and Allendorf (2001, pp. 762) concluded that an average of 100 spawning adults each year is required to minimize risks of inbreeding in a bull trout population and that 1,000 spawning adults each year will likely prevent loss of genetic diversity due to genetic drift. This latter value of 1,000 spawning adults may also be reached with a collection of local populations among which gene flow occurs. The CRBTWG utilized these

general benchmarks in the Feasibility Assessment to assess potential risk to each of the five potential donor stocks in the lower Columbia River from the loss of individuals, recognizing that risk increases as donor populations near 100 spawning adults and diminishes as populations approach 1,000 spawning adults (Shively *et al.* 2007, Ch. 3, pp. 8–14).

When the Feasibility Assessment was developed in December 2007, bull trout from two of the above five river basins, the Lewis River and Deschutes River, contained groups of interacting local populations that exceeded 1,000 spawning adults. For the Lewis River basin, this total included the combined Pine Creek and Rush Creek populations that occur above Swift Dam. For the Deschutes River basin, it included the three interacting populations present in the Metolius River subbasin. Since 2007, adult bull trout abundance in the Lewis River has declined, with the current number of annual spawners estimated to be approximately 536 adults (Byrne 2010, pers. comm.). The Metolius River bull trout population has also declined but has still maintained a spawning population size greater than 1,000 adults, which is sufficiently large enough to protect against the loss of genetic diversity from genetic drift (Rieman and Allendorf 2001, p. 762). The Metolius River population of bull trout comprised an estimated 1,458 spawning adults in 2010 (Ratliff 2010, pers. comm.). Given the long-term stability and size of the Metolius River bull trout population, the Service has determined this population to be at very low risk of impact from loss of individuals from contribution as donor stock, and the least “at risk” of the potential donor stocks that were considered.

This final action allows for the direct transfer of wild bull trout adults, subadults, juveniles, fry, and fertilized eggs from the Metolius River subbasin to the Clackamas River. The numbers and life stages of fish transferred each year will be linked strongly to the annual population size of the donor stock, as well as to information derived from monitoring the success of the various life stages in the NEP over the initial few years of the project. Details regarding the implementation strategy such as release sites and timing, annual stocking numbers, disease screening, and monitoring and evaluation are contained in the Implementation, Monitoring, and Evaluation Plan, which is appended to our final EA, and can be obtained: (1) In person at the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**) and (2)

online at <http://www.regulations.gov> or <http://www.fws.gov/oregonfwo/Species/Data/BullTrout/ReintroductionProject.asp>.

Management Considerations and Protective Measures

We conclude that the effects of Federal, State, or private actions and activities will not pose a substantial threat to bull trout establishment and persistence in the Clackamas River subbasin, because most activities currently occurring in the NEP area are compatible with bull trout recovery and there is no information to suggest that future activities would be incompatible with bull trout recovery. Most of the area containing suitable release sites with high potential for bull trout establishment is managed by the USFS and is protected from major development activities and timber harvest through the following mechanisms:

(1) Forty-seven miles (76 kilometers) of the Clackamas River, from its headwaters to the Big Cliff area just upstream of North Fork Reservoir, was designated in 1988 as part of the Federal Wild and Scenic Rivers System (USFS 1993, p. 14).

(2) The State of Oregon designated 82 miles (132 kilometers) of the Clackamas River and its tributaries as part of the Oregon Scenic Waterway Program in 1989 (ORS 390.826).

(3) The 1994 Northwest Forest Plan established protective measures, standards and guidelines, and land allocations to maintain and restore at-risk fish species, including bull trout.

(4) NMFS’ listings of salmon and steelhead under the Act caused fisheries management practices (*i.e.*, sport fishing regulations and stocking of catchable rainbow trout) in the Clackamas River subbasin to become significantly more restrictive.

(5) The Federal Omnibus Public Land Management Act of 2009 (Pub. L. 111–11) designated two new wilderness units in the upper Clackamas River watershed, at Sisi Butte (3,245 acres) and at Big Bottom (1,264 acres), and also designated the Big Bottom Protection Area (1,581 acres) as a special management unit adjacent to the Big Bottom Wilderness unit.

The Service recognizes that the provisions of PGE’s Clackamas Settlement Agreement do not reflect the reintroduced presence of bull trout in the Clackamas River subbasin. However, no additional changes or protections regarding PGE’s operation of the Clackamas River Hydroelectric Project are necessary to support a successful

reintroduction of bull trout to the Clackamas River subbasin.

The Service, ODFW, and the USFS, in cooperation with members of the CRBTWG, will implement and manage the reintroduction of bull trout. In addition, these agencies will carefully collaborate on collection and transportation of donor stock, releases, monitoring and evaluation, coordination with landowners and land managers, public awareness, and other tasks necessary to ensure successful reintroduction of the species. A few specific management considerations related to the experimental population are addressed below.

Incidental Take: Experimental population special rules contain specific prohibitions and exceptions regarding the taking of individual animals. These special rules are compatible with routine human activities in the expected reestablishment area. Section 3(19) of the Act defines “take” as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Take of bull trout within the experimental population area will be allowed provided that the take is unintentional, not due to negligent conduct, or is consistent with State fishing regulations that have been coordinated with the Service. We expect levels of incidental take to be low because the reintroduction is compatible with existing activities and practices in the area. As recreational fishing for species other than bull trout is popular within the NEP area, we expect some incidental take of bull trout from this activity but, as long as it is in compliance with ODFW fishing regulations and Tribal regulations on land managed by the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWSRO), such take will not be a violation of the Act.

Special Handling: Service and ODFW employees and authorized agents acting on their behalf may handle bull trout for scientific purposes; to relocate bull trout to avoid conflict with human activities, for recovery purposes; to relocate bull trout to other release sites in the Clackamas River, to aid sick or injured bull trout; and to salvage dead bull trout. However, non-Service or other non-authorized personnel will need to acquire permits from the Service and ODFW for these activities. USFS personnel, the primary land managers in the reestablishment area, will be permitted to handle reintroduced bull trout through a modification of their existing section 10(a)(1)(A) recovery permit.

Coordination with Land Owners and Land Managers: The NEP reintroduction has been discussed with potentially affected State agencies, Tribal entities, local governments, businesses, and landowners within the expected reestablishment area. The land along the expected reestablishment area is owned mainly by USFS although a small portion located in North Fork Reservoir is owned by PGE. Nothing in this rule requires any additional changes, protections, or mitigation or enhancement measures for bull trout with respect to PGE's operation of Project 2195 (Clackamas River Hydroelectric Project) pursuant to the Settlement Agreement or the new license for the Project; nor does any provision of this rule amend or modify the Settlement Agreement or require that any plan pursuant to the Settlement Agreement be modified to address the presence of bull trout.

Public Awareness and Cooperation: During October and November 2008, in cooperation with ODFW and USFS, we conducted several NEPA scoping meetings on this action. We notified a comprehensive list of stakeholders of the meetings including affected Federal and State agencies, Tribal entities, local governments, landowners, nonprofit organizations (environmental and recreational), and other interested parties. The comments we received are listed in the final EA, were included in the formulation of alternatives considered in the NEPA process, and were considered in this final rule designating an NEP for reintroduced bull trout.

Potential impacts to other Federally listed fish species: Stakeholders expressed concern during development of the proposed rule and this final rule that predation and competition from reintroduced bull trout may negatively impact Federally listed anadromous salmonids, particularly juvenile life stages of steelhead trout, coho salmon, and Chinook salmon in the Clackamas River above North Fork Dam. Although our analysis suggests the risk to anadromous salmonids from this action is low, we acknowledge the uncertainty and sensitivity around this issue. We believe it is important to assess uncertainty using appropriate tools and methods and then take steps necessary to reduce that uncertainty to an acceptable level while recognizing that it cannot be eliminated entirely.

In the development of this action, we have addressed concerns over predation and competition to listed anadromous salmonids by sponsoring an expert science panel workshop specifically to assess the potential impacts of a

Clackamas River bull trout reintroduction on listed anadromous salmonids (Marcot *et al.* 2008). Based on stakeholder input, we modified our initial proposed action to reduce the number and maximum sizes of older life stages of bull trout for transfer, and we committed to tagging all fish transferred, including radio-tagging all older life stages the first 2 years of project implementation in part to monitor abundance, behavior and distribution. In addition, we funded, together with the USFS and PGE, a baseline food Web investigation in the upper Clackamas River subbasin in order to establish a baseline for future monitoring of food Web effects, particularly on salmon and steelhead, following the bull trout reintroduction (Lowery and Beauchamp 2010). We have also met numerous times during development of this final rule with our project partners and stakeholders to discuss monitoring actions that could be incorporated into the reintroduction program to reduce uncertainty and concern over impacts to listed anadromous salmonids.

Adaptive management will guide how this project is implemented on an annual basis. The primary tool to accomplish adaptive management is monitoring and evaluation. The monitoring of impacts to salmon and steelhead will provide valuable information that will inform how the project is implemented in future years including numbers, life stages, and release locations of bull trout, as well as the disposition of individual fish should they be documented or observed staging near, within, or immediately below fish bypass systems where juvenile salmonids may be particularly vulnerable to predation.

An adaptive approach provides flexibility to act in the face of uncertainty, is learning based, and specifies what actions are to be taken and when. Consistent with this approach, we developed, in consultation and coordination with NMFS, the State of Oregon, and other project partners, a Stepwise Impact Reduction Plan (SIRP), to facilitate management decisions associated with potential impacts from the bull trout reintroduction on listed anadromous salmonids.

The purpose of the SIRP, which is described in more detail in the EA, is to outline a sequence of management actions that will be taken to minimize impacts to salmon and steelhead from the reintroduction of bull trout in the Clackamas River, if specific bull trout and/or anadromous salmonid thresholds are triggered. Management actions implemented under the SIRP, and the

frequency of those actions, will be informed by: (1) The reintroduction project's monitoring and evaluation program, jointly implemented by the Service, ODFW, and USFS; and (2) the conservation status of the listed Clackamas River anadromous salmonid populations.

While we believe the SIRP will provide much of the guidance necessary to address potential impacts to salmon and steelhead from the reintroduction project, we acknowledge our inability to predict all likely impact scenarios and appropriate management responses. To that end, we anticipate the SIRP will be modified as necessary, in consultation and coordination with NMFS, the State of Oregon, and other project partners, consistent with the overall adaptive management of the project.

Our analysis (USFWS 2010, pp. 109–131) indicated a low likelihood for population-level impacts to Federally listed salmon and steelhead populations. However if the Service determines, in consultation and coordination with the State of Oregon, NMFS and other project partners, and based on project monitoring and evaluation, that the reintroduction efforts are not consistent with the recovery of salmon or steelhead, the reintroduction program will be discontinued and bull trout will be removed from the experimental population area. The Service initiated formal consultation with NMFS pursuant to section 7(a)(2) of the Act in December 2010 (USFWS 2010) and will ensure section 7(a)(2) compliance prior to releasing bull trout into the Clackamas River.

Adaptive Management: A key component of our proposed action is the adaptive management of the bull trout reintroduction project, ranging from the annual numbers, life stages, and collection methods of the donor stock, to the locations and timing of translocations (implementation strategy), and finally the management of bull trout in the Clackamas River relative to their potential impact on threatened salmon and steelhead. Our goal with this approach is to implement the project most effectively, while assuring no harm to the donor stock and limiting negative impacts to other listed species in the Clackamas River subbasin.

The adaptive management of the bull trout reintroduction project will be based in part on guidance provided in the Department of the Interior's technical guide to adaptive management (USDI 2009). The guidance defines adaptive management as a decision process that promotes flexible

decisionmaking that can be adjusted in the face of uncertainties as outcomes from management actions and other events become better understood. Careful monitoring of these outcomes both advances scientific understanding and helps adjust policies or operations as part of an iterative learning process. Adaptive management also recognizes the importance of natural variability in contributing to ecological resilience and productivity. It is not a “trial and error” process, but rather emphasizes learning while doing. Adaptive management does not represent an end in itself, but rather is a means to more effective decisions and enhanced benefits. Its true measure is in how well it helps meet environmental, social, and economic goals, increases scientific knowledge, and reduces tensions among stakeholders (USDI 2009).

Monitoring and evaluation will inform the adaptive management of this project, including the appropriate management of this experimental population of bull trout both during the period they are being reintroduced and post-project if we are successful in reestablishing a self-sustaining population in the Clackamas River.

Monitoring and Evaluation

Acknowledging the limited availability of information on fish introductions and reintroductions (Seddon *et al.* 2007, p. 305), the Service and our project partners adopted a goal early in project development to document, learn about, and report on all the major phases of the project beginning with our feasibility assessment (Shively *et al.* 2007; Dunham and Gallo 2008) and extending through project planning, development, and implementation. One of the most critical aspects of this goal is to document the effectiveness of the reintroduction by evaluating components of the implementation strategy, including the utilization of habitats chosen for release of individuals, the numbers and life stages of donor stock, the genetic health of the recipient population, documentation of reproduction and recruitment, and ultimately the establishment of a self-sustaining bull trout population.

In order to document and adaptively manage the project, a robust monitoring and evaluation program is necessary. Along with other project documentation, we expect information gained from the monitoring and evaluation program will contribute significantly to other fish reintroductions, and specifically bull trout recovery projects that we anticipate will occur across the species’

range consistent with recovery guidance for the species (USFWS 2002, Ch. 1). The monitoring and evaluation program, detailed in the Implementation, Monitoring, and Evaluation Plan appended to the final EA, has three major goals: (1) Monitor and evaluate bull trout reintroduction effectiveness, (2) monitor and evaluate donor population status, and (3) monitor and evaluate impacts to listed anadromous salmonids. These three major components are summarized below:

Reintroduction Effectiveness Monitoring: The objectives of the effectiveness monitoring program for phase 1 of the project (2011–2017) are to assess: (1) Distribution and movement, (2) relative survival of translocated bull trout by monitoring presence and absence, (3) occurrence of spawning and reproduction, and (4) genetic health (as measured against the donor population). Successful reproduction in phase one of the project (2011–2017) would logically result in the incorporation of a monitoring component directed at assessing the distribution, movement, growth, and survival of the initial cohorts of naturally produced bull trout. Monitoring activities in phase 2 (2018–2024) and phase 3 (2025–2030) will be informed by phase 1 monitoring and evaluation. Effectiveness monitoring of the project will be conducted jointly by the Service and ODFW, with assistance from the USFS and potentially U.S. Geological Survey (USGS) and the University of Washington.

Donor Population Monitoring: We intend to monitor donor stock status annually to determine if the population is free of pathogens of concern, and to ensure the population maintains a minimum threshold of spawning adults to contribute as a donor stock to the Clackamas River bull trout reintroduction project. Bull trout in the Metolius River are monitored primarily by annual full census redd counts. These counts are conducted by ODFW, CTWSRO, USFS, PGE, and Service staff. In addition to the genetic monitoring of the recipient bull trout population in the Clackamas River subbasin, we will also replicate the Metolius River bull trout genetic health assessment (DeHaan *et al.* 2008) on the donor stock at an appropriate interval to ensure the loss of individuals via contribution toward the Clackamas River reintroduction is not impacting the genetic health of the Metolius River donor stock.

Monitoring Impacts to Anadromous Salmonids: The monitoring of potential impacts to juvenile anadromous salmonids will generally focus on PGE’s Clackamas Hydroelectric Project area.

Juvenile salmonids utilize project reservoirs, especially North Fork Reservoir, for rearing. Fish collection facilities that aid downstream migration of salmon and steelhead juveniles necessarily concentrate the fish, increasing their vulnerability to predation and the potential for them to avoid collection facilities due to the presence of a predator. These areas of increased vulnerability for anadromous juveniles are also areas where we expect to be better able to detect a behavioral response caused by bull trout, relative to areas upstream of North Fork Reservoir or in the lower Clackamas River below River Mill Dam. We developed this monitoring component with the intent of reducing uncertainty and informing future management decisions associated with the bull trout reintroduction program.

In order to assess impacts to listed anadromous salmonids we propose to: (1) Determine if adult and subadult bull trout occupy areas within the PGE hydroelectric project during periods in which they could consume particularly high numbers of rearing or migrating juvenile salmon and steelhead; (2) if so, determine if survival rates are affected for listed anadromous salmonid juveniles rearing in, or moving through the PGE hydroelectric project area; and (3) determine the degree to which bull trout are responsible for such impacts by using field data, bioenergetics, and life-cycle modeling. Monitoring of impacts to anadromous salmonids will be conducted by the Service and ODFW, with possible assistance from USGS, PGE, University of Washington, and the National Oceanic and Atmospheric Administration’s Northwest Fisheries Science Center (NOAA–NWFSC).

Summary of Comments and Responses

We requested written comments from the public on the proposed rule and draft EA published on December 9, 2009 (74 FR 65045). We also contacted the appropriate Federal, State, and local agencies; Tribes; scientific organizations; and other interested parties and invited them to comment on the proposed rule. The comment period was open from December 9, 2009, to February 10, 2010.

We reviewed all comments received for substantive issues and new information regarding the proposed NEP. Substantive comments received during the comment period have either been addressed below or incorporated directly into this final rule.

We received comments from eight parties, including comments from natural resource management agencies, not-for-profit organizations, and private

entities. All commenters specifically expressed support for the reestablishment of the bull trout in the Clackamas River although three of the eight commenters expressed concerns regarding potential impacts to Federally threatened salmon and steelhead present in the Clackamas River.

Public Comments

(1) *Comment:* Several commenters suggested reintroduction of bull trout to the Clackamas River under section 10(j) of the Act may not provide ample protection to ensure the long-term viability of the population, and encouraged the Service to reintroduce bull trout to the Clackamas River under full protections of the Act, along with designated critical habitat.

Our Response: Any population determined by the Secretary to be an experimental population will be treated as if it were listed as a threatened species for purposes of establishing protective regulations with respect to that population pursuant to section 4(d) of the Act. The protective regulations adopted for an experimental population will contain applicable prohibitions, as appropriate, and exceptions for that population. In addition, before authorizing the release of an experimental population (including eggs, propagules, or individuals) of an endangered or threatened species, the Service must consider the extent to which the introduced population may be affected by existing and anticipated Federal or State actions or private activities within or adjacent to the experimental population area.

We have assessed existing or anticipated Federal or State actions and private activities within or adjacent to the experimental population area and, along with the applicable prohibitions in this final rule, we have determined these actions to be compatible with, and protective of, a reestablished population of bull trout in the Clackamas River. We believe, based on this assessment, that the protective regulations adopted by this rule are appropriate and provide adequate protections for a reintroduced population of bull trout.

Lastly, under 50 CFR 17.81(f), the Secretary may designate critical habitat as defined in section 3(5)(A) of the Act for an essential experimental population but not for a nonessential population.

(2) *Comment:* One commenter suggested reintroductions of bull trout to historical habitat are essential for the continued survival of the species, and thus encouraged the Service to designate the experimental population in the Clackamas River as an “essential”

population under the Act, rather than a “nonessential” population.

Our Response: We have determined that restoring bull trout to the Clackamas River is not essential to the continued existence of the species. We maintain that releasing bull trout under the section 10(j) NEP provision of the Act is the most appropriate way to achieve conservation for this species in the Clackamas River and that this action is consistent with the purposes of the Act.

(3) *Comment:* One commenter suggested that the Service should consider removing the “experimental nonessential” designation under section 10(j) of the Act if the bull trout reintroduction project is successful.

Our Response: Our intent is for the section 10(j) rule to remain in place until the status of the species improves to a point where listing is no longer necessary. Section 10(j) of the Act does not give us the authority to “permanently” declare an NEP. However, we have made it clear that it is not our intention to change this designation until the species meets the requirements for delisting, and we currently do not anticipate that any circumstances would warrant changing this designation. The proposed rule and this final rule contain language on this subject found in 50 CFR 17.85(a)(1)(iii), specifically: “We do not intend to change the NEP designations to ‘essential experimental,’ ‘threatened,’ or ‘endangered’ within the NEP area. Additionally we will not designate critical habitat for the NEP, as provided by 16 U.S.C. 539(j)(2)(C)(ii).”

(4) *Comment:* Several commenters noted the lack of quantitative information on the distribution, abundance, and diversity of the native fish community in the upper Clackamas River and suggested the Service conduct an assessment prior to implementing the bull trout reintroduction project to affirm the sufficiency of a prey base to support the reestablishment of a viable bull trout population.

Our Response: We agree there is limited quantitative information on the native fish community in the upper Clackamas River. However, upper Clackamas River baseline foodweb surveys that were conducted in association with the action considered in this final rule (Lowery and Beauchamp 2010), along with an abundance of qualitative information collected by the USFS and State of Oregon (Shively *et al.* 2007, Appendix F, p. 24), confirm the full complement of native species (except for bull trout) in the upper Clackamas River. There is no evidence to suggest the upper

Clackamas River forage base would not compare favorably with the abundance, distribution, and diversity of native fishes found in other major subbasins in the lower Columbia River that support viable populations of bull trout, including the McKenzie, Lewis, and Deschutes rivers. Although historical reductions in the anadromous forage base in the Clackamas River may have negatively impacted the historical bull trout population, as noted above in *Biological Information*, the primary factors leading to the extirpation of bull trout in the Clackamas River were migration barriers from hydroelectric and diversion dams, direct and incidental harvest in sport and commercial fisheries, targeted eradication through bounty fisheries (currently known as “sport reward” programs), and habitat and water quality degradation from forest management and agricultural activities not in accordance with best management practices (Shively *et al.* 2007, Ch. 1, pp. 18–22).

(5) *Comment:* In order to minimize and offset potential impacts to anadromous salmon and steelhead from bull trout predation and competition, one commenter suggested initiating habitat improvement actions such as adding refuge cover and distributing excess hatchery salmon and steelhead carcasses into the upper Clackamas River to increase marine-derived nutrients and stream productivity.

Our Response: Although we do not anticipate significant impacts from bull trout on threatened salmon and steelhead, if our monitoring program indicates bull trout are having population-level impacts, the Service and our project partners will implement actions to minimize and offset these impacts. While these actions may include habitat restoration projects such as those recommended, the most immediate management actions to reduce impacts will be modification of the bull trout reintroduction implementation strategy such as the numbers, life-stages, and locations of releases, and removal of individual bull trout if they are found occupying areas that artificially concentrate juvenile salmon and steelhead such as fish passage facilities associated with the Clackamas Hydroelectric Project.

(6) *Comment:* One commenter noted the presence of nonnative brook trout in a small portion of the suitable habitat identified for bull trout reintroduction, and suggested that they should be eradicated in order to prevent hybridization and competition with reintroduced bull trout.

Our Response: While we agree that nonnative brook trout can negatively affect bull trout through hybridization, predation, and competition, our literature review on the subject for the Clackamas Bull Trout Reintroduction Feasibility Assessment (Shively *et al.* 2007, Ch. 4, pp. 1–2) suggests negative effects are variable across the range these two species overlap. In some places, brook trout appear to have a strong negative impact, whereas in others there is no apparent impact (Dunham *et al.* 2002, pp. 384–385). The influence of nonnative brook trout on bull trout may depend in part on local habitat features. Rich *et al.* (2003, pp. 1059–1061) examined the influence of habitat features on the distribution and co-occurrence of nonnative brook trout and bull trout. This study suggested that bull trout and brook trout may partition themselves naturally based on habitat type and stream temperature, and that bull trout may be more susceptible to brook trout invasion in small, low-gradient streams where brook trout may have a competitive advantage (Paul and Post 2001, pp. 424–428). In areas of clean, cold water with complex habitat, bull trout may successfully compete with brook trout (Rieman *et al.* 2005, pp. 72–76).

Although systematic quantitative surveys for brook trout have not occurred in the upper Clackamas River, stream surveys and biological inventories by the USFS over the last several decades provide a reliable source for documenting observations of brook trout in particular river segments and streams (Shively *et al.* 2007, Appendix F, p. 24). Brook trout are present in a small portion of the habitat identified as suitable for bull trout reintroduction (less than 10 percent) in the upper Clackamas River (Shively *et al.* 2007, Ch. 4, p. 2). Given their limited distribution in the upper Clackamas River, we do not anticipate brook trout will adversely affect the success of this reintroduction project. Further, while we support the goal of eradication of nonnative species, our assessment of the feasibility of eradication of brook trout in the upper Clackamas River suggests the likelihood of complete eradication is low and the cost would likely be high. Consequently, it is unlikely we will pursue eradication efforts in the foreseeable future.

(7) *Comment:* Several commenters requested that the Federal rulemaking cause no additional requirements of Portland General Electric above and beyond those currently outlined in the multiparty settlement agreement for relicensing of the Clackamas Hydroelectric Project, nor that any

potential ecological effects from the bull trout reintroduction project in and of itself trigger mitigation requirements outlined in the agreement.

Our Response: Language in the proposed rule was intended to convey our position on this issue, consistent with the request above. This final rule and the above background discussion in “Addressing Causes of Extirpation” contains additional language in several sections to clarify our support for this request. See also our response to Comment 9 below.

(8) *Comment:* One commenter indicated that the Draft Implementation, Monitoring and Evaluation Plan, appended to the draft EA, lacked detailed information and should be expanded. The same commenter suggested the monitoring portion of the draft plan did not provide adequate information for decisionmaking.

Our Response: While the general implementation strategy (transfer numbers, life stages, donor stock, release locations) has not changed from that outlined in the proposed rule and draft EA, the Service and our project partners have added specificity to the implementation component of the plan. Similarly, and based strongly on comments received on the proposed rule and draft EA, we developed a robust monitoring and evaluation component of the plan to document the effectiveness of the reintroduction, assess potential impacts to the bull trout donor stock in the Metolius River, and assess potential impacts to threatened salmon and steelhead. The monitoring and evaluation program, which will begin immediately upon initiation of the project, will feed directly into the adaptive management of the reintroduction project. Given the level of detail that has been added to the Implementation, Monitoring and Evaluation Plan since publication of the proposed rule and draft EA, we are confident the plan has sufficient detail to appropriately guide the project and provide necessary information for decisionmaking. The monitoring program is summarized above in the *Monitoring and Evaluation* section of this final rule and is appended to the final EA as a component of the Implementation, Monitoring, and Evaluation Plan. See also our response to Comment 12 below.

(9) *Comment:* One commenter suggested that the draft EA was insufficient and suggested the action proposed may warrant the development of an Environmental Impact Statement (EIS) due to the possibility of significant impacts to the Clackamas Hydroelectric Project settlement agreement and to

Federally threatened salmon and steelhead through competition and predation by bull trout.

Our Response: An EIS is required only when a project is a major Federal action with significant impact(s) to the human environment, or alternatively where there is substantial controversy surrounding the potential for significant impacts to the human environment, such that the more limited analysis in an EA to support a “Finding of No Significant Impact (FONSI)” may not be appropriate. If an EA fully considers the potential direct, indirect and cumulative impacts of the project and that analysis is sufficient in reaching a FONSI, then the preparation of an EIS is not warranted. Our analysis in the EA did not suggest a likelihood of significant environmental effects; nor did it identify substantial controversy surrounding the potential for significant impacts to the human environment.

Scoping and public comments identified concerns with potential impacts to the Clackamas River hydroelectric project settlement agreement, as well as to salmon and steelhead populations from predation and competition by bull trout. We have addressed these concerns by: (1) Including clarifying language in several sections of this final rule and the final EA, (2) modifying components of the proposed action, and (3) developing a Stepwise Impact Reduction Plan as part of our adaptive management program to reduce risk and uncertainty with regards to impacts to listed anadromous salmonids, and to guide management of a Clackamas River bull trout population and future implementation of the project.

As noted elsewhere in this final rule, the designation of an NEP population of bull trout in the Clackamas River will not cause additional requirements of Portland General Electric above and beyond those currently outlined in the multiparty settlement agreement for relicensing of the Clackamas Hydroelectric Project, nor will any potential ecological effects from the bull trout reintroduction project in and of itself trigger mitigation requirements outlined in the agreement. While we acknowledge some uncertainty around the interactions between bull trout and anadromous salmon and steelhead, the preponderance of information does not suggest that significant population-level impacts will occur.

(10) *Comment:* One commenter suggested the adaptive management plan for the action lacked detail and needed improvement.

Our Response: We agree. As a result we added substantially to the adaptive

management plan for the action considered in this final rule. Most notably, we incorporated recommendations provided in the Department of the Interior's technical guidance manual on adaptive management (USDI 2009), and we developed a Stepwise Impact Reduction Plan specifically to assist in management decisions associated with potential impacts from the reintroduction of bull trout on threatened salmon and steelhead in the Clackamas River. Recommendations adopted from the Department of the Interior's technical manual on adaptive management, and the Stepwise Impact Reduction Plan to address potential impacts to threatened salmon and steelhead, are summarized in this final rule above in *Potential impacts to other Federally listed fish species*, and are presented in more detail in the final EA.

(11) *Comment:* One commenter suggested that the Service had not adequately consulted with the individual in developing the proposed rule per the procedural requirements of experimental population regulations, and further, that the proposed rule did not represent the required agreement between the Service and affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of an experimental population.

Our Response: Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of an experimental population.

The language above does not require the Service to agree on all issues and concerns, nor are we required to have full agreement from potentially affected local, State, Federal, and private partners prior to finalizing section 10(j) experimental population rules. In development of the proposed and final rule, we coordinated closely with the appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners, to resolve as many concerns as possible. In addition, we assembled management and technical committees with representation from all major stakeholders in the reintroduction, to further ensure we addressed as many concerns as possible

prior to finalization of the final rule. Given these efforts, it is clear that we have complied with the requirements of section 10(j) of the Act in the development of the proposed rule and this final rule. As during the development of this action, we are committed to working with project partners and stakeholders during and following implementation of the reintroduction to address concerns that may arise.

(12) *Comment:* Several commenters suggested that the assessment of potential impacts to threatened salmon and steelhead from the bull trout reintroduction was inadequate and suggested a more thorough risk assessment prior to implementing the project.

Our Response: While we disagree that our pre-project assessment of potential impacts to threatened salmon and steelhead was inadequate, we do recognize the concern for the recovery of these species in the Clackamas River and for their respective evolutionarily significant units/distinct population segments. In recognition of those concerns the Service has invested, and will continue to invest, significant resources toward assessing potential impacts from the bull trout reintroduction on salmon and steelhead in the Clackamas River.

The expert science panel workshop (Marcot *et al.* 2008), the final report of which was appended to the draft EA, was conceived and implemented precisely to investigate the potential impact of a bull trout reintroduction on threatened salmon and steelhead in the Clackamas River. In addition, we funded, together with our primary project partners and stakeholders, a pre-project baseline food Web investigation in the upper Clackamas River subbasin specifically to allow for greater precision in determining impacts to salmon and steelhead from bull trout during and following the reintroduction. Finally, a large component of our monitoring and evaluation program is designed to investigate impacts on salmon and steelhead.

(13) *Comment:* One commenter suggested the draft EA did not adequately consider the ability and capacity of the Clackamas River to support a reintroduced population of bull trout and as a result, the proposed reintroduction strategy is overly aggressive and population goals likely unattainable. The same commenter recommended that the Service modify the implementation strategy to eliminate the use of older life stages of bull trout to minimize the chance of exceeding the

carrying capacity of the Clackamas River.

Our Response: The draft EA and proposed rule both summarized the conclusions of the feasibility assessment (Shively *et al.* 2007), which found that a reintroduction of bull trout to the Clackamas River is biologically feasible based in large part on habitat suitability for spawning and early juvenile rearing, reduction and elimination of threats that led to extirpation, and availability of a suitable donor stock. The amount and type of suitable habitat, as well as the available forage base, compares favorably to other river systems in the lower Columbia River with extant bull trout populations, such as the McKenzie, Lewis, and Deschutes rivers. The feasibility assessment (Shively *et al.* 2007), the conclusions of which were presented in the draft EA, clearly considered the ability and capacity of the Clackamas River to support a reintroduced population of bull trout.

The goal of the project is to reestablish a self-sustaining bull trout population of 300–500 spawning adults in the Clackamas River by 2030 that contributes to the recovery of bull trout in the Willamette basin and to overall recovery criteria outlined in the Service's 2002 draft recovery plan (USFWS 2002, Chapter 1, p. v). For this project we define a self-sustaining population as one that maintains a minimum adult annual spawner abundance of 100 individuals, contains a high level of genetic diversity representative of the donor stock, and requires little or no additional transfers. The numerical goal of 300–500 adult spawners is consistent with 2002 draft recovery planning targets for bull trout abundance in the Clackamas River subbasin. Although the amount of suitable habitat in the Clackamas River suggests there is sufficient capacity to support a population of this size, bull trout distribution across the species' range, even within areas of suitable habitat, is patchy; thus, the true capacity of the Clackamas River subbasin is unknown.

The Service and our project partners view the inclusion of older life stages of bull trout in the implementation strategy as an important component of the project. In addition, we believe that, given the limited number of these older-aged individuals that will be transferred, the risk of exceeding the carrying capacity of the Clackamas River is extremely low. We chose to use multiple life stages of bull trout in order to maximize our likelihood of success with the reintroduction, and to test whether older life stages of bull trout could be successfully moved from one

major watershed to another to promote reestablishment of extirpated populations in a less intensive and more timely effort than would occur if only fertilized eggs, fry, or juveniles were used. However, we acknowledge the uncertainty regarding whether translocated subadult and adult bull trout will adapt to the Clackamas River and contribute to successful natural reproduction. In response to this uncertainty, we plan to intensively monitor the behavior, distribution, movement, and reproductive success of these older life stages over the first 2 years of the project by utilizing passive integrated transponder tag and radio tag technology. Continued transfer of older life stages beyond the second year of the project would occur only if monitoring and evaluation indicates the translocated older life stages are adapting to the Clackamas River and contributing to successful natural reproduction.

(14) *Comment:* One commenter expressed concern with potential predation and competition impacts to threatened salmon and steelhead in the Clackamas River from reintroduced bull trout. In order to facilitate future management of the reintroduction project, and if successful, the bull trout population, the commenter recommended that the Service work with the State (Oregon Department of Fish and Wildlife) and National Marine Fisheries Service (NMFS) to assess and define an acceptable level of impact on salmon and steelhead.

Our Response: We support this recommendation. This Federal action requires that we formally consult with NMFS under section 7 of the Act due to potential impacts to Federally threatened salmon and steelhead under their jurisdiction. The Service initiated formal consultation with NMFS pursuant to section 7(a)(2) of the Act in December 2010 (USFWS 2010) and will ensure section 7(a)(2) compliance prior to releasing bull trout into the Clackamas River. This Federal action also required an amendment to the State's Clackamas River Subbasin Plan to include the reintroduction of bull trout (ODFW 2010); this process required a review of the project by the State's Fish and Wildlife Commission, who voted unanimously in September 2010 to support the action and the plan amendment. These two actions acknowledge the formal administrative role the State of Oregon and NMFS have had in the review of this Federal action. And just as importantly, the State of Oregon and NMFS have had full representation in the multiyear planning of this effort through the Clackamas Bull

Trout Working Group, as well as the project's Manager's Committee and several technical committees.

The State and NMFS are jointly developing a formal recovery plan for the threatened salmon and steelhead in the lower Columbia River, which includes the threatened species of salmon and steelhead found in the Clackamas River. The current draft recovery plan, and the information utilized in development of the draft plan, does not include information that would allow the Service to define an "acceptable level of impact" as applied to recovery planning objectives for threatened salmon and steelhead. We expect NMFS may conduct this type of analysis as part of the section 7 consultation process in response to the biological assessment we submitted in December 2010.

Independent of the formal consultation process with NMFS, we have initiated discussions with technical staff from NMFS NW Region Science Center and the U.S. Geological Survey (USGS) to investigate the feasibility and utility of life-cycle and bioenergetics modeling to better predict the potential influence of the bull trout reintroduction project on threatened salmon and steelhead in the Clackamas River. We are committed to working closely with the State of Oregon, NMFS, and other project partners and stakeholders during and following project implementation to assess the potential impact of the bull trout reintroduction on threatened salmon and steelhead in the Clackamas River.

Findings

We followed the procedures required by the Act, NEPA, and the Administrative Procedure Act during this Federal rulemaking process. We solicited public comment on the proposed NEP designation. We have considered all comments received on the proposed rule and the draft EA before making this final determination. Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that releasing bull trout into the Clackamas River subbasin will further the conservation of the species but that this population is not essential to the continued existence of the species in the wild.

Effective Date

The Director has determined, pursuant to 5 U.S.C. 553(d)(3), that the agency has good cause to make this rule effective upon publication. The Service has previously provided an opportunity for public comment on the rule, and has

consulted extensively with involved stakeholders. In addition, the seasonal window for implementing this reintroduction project is driven by the biology of the species. Collection of donor stock is best accomplished during the late spring and early summer when fish are most vulnerable to capture techniques, and late spring/early summer outplanting of donor stock is preferred given that seasonal productivity of aquatic systems is high that time of year and donor stock would be expected to have higher survival than if outplanted at other times of the year. In making this final rule effective immediately upon publication, it increases the likelihood that the Service and our primary partners will be able to successfully implement this project during the preferred window for implementation in 2011.

Peer Review

A final draft of the CRBTWC's Feasibility Assessment was provided to the State of Oregon Independent Multidisciplinary Science Team (IMST) for peer review. The IMST is an impartial scientific review panel charged with advising the State of Oregon on matters of science related to fish recovery, water quality improvements, and enhancing watershed health. The IMST, appointed by the Governor, provides independent, scientific analysis and evaluation of State actions and policies under the Oregon Plan for Salmon and Watersheds (Oregon Plan). The charge of the IMST is to focus on science, maintain its independence, operate by consensus, and report its findings and conclusions in written reports and reviews.

The Service, along with USFS and ODFW, presented a summary of the goals, analyses, and intended use of the Feasibility Assessment at the IMST's October 16, 2006, public meeting. The IMST received a draft of the Feasibility Assessment for review on November 28, 2006. The IMST review of the draft Feasibility Assessment was by an IMST subcommittee including four scientists. The subcommittee held a public meeting on December 13, 2006, to discuss the Feasibility Assessment and to prepare a draft review. The draft review was discussed and unanimously adopted (one member absent from vote) at the January 18, 2007, IMST public meeting. Comments on the draft Feasibility Assessment were provided to the Service, USFS, and ODFW on January 30, 2007. Comments were subsequently posted on the IMST Web site: <http://www.fsl.orst.edu/imst/>, and addressed in the final Feasibility

Assessment (Shively *et al.*, 2007, Appendix F).

The IMST peer review of the science in the final Feasibility Assessment, much of which was incorporated into this final rule, meets our responsibilities under our policy on peer review, published on July 1, 1994 (59 FR 34270).

Required Determinations

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 801 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We certify that this rule would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The area affected by this rule includes the Clackamas River subbasin and the

mainstem of the Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel, in Oregon. Because NEP designations do not establish substantial new regulation of activities, we do not expect this rule would have any significant effect on recreational, agricultural, hydropower generation, or development activities. Although the entire NEP boundary encompasses a large area, the section of the NEP area where we can anticipate the establishment of an experimental population of bull trout is mainly public land owned by the USFS. In addition, NEPs occurring outside the National Refuge System or the National Park System are treated as proposed for listing under the provisions of section 7 (other than section 7(a)(1)) of the Act. In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2) of the Act. Section 7(a)(1) of the Act requires Federal agencies to use their authorities to further the conservation of listed species. Section 7(a)(4) of the Act requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

The principal activities on private property near the expected reestablishment area in the NEP are agriculture, ranching, hydropower generation, and recreation. The presence of bull trout would likely not affect the use of lands for these purposes because there would be no new or additional economic or regulatory restrictions imposed upon States, non-Federal entities, or members of the public due to the presence of bull trout. Therefore, this rulemaking is not expected to have any significant adverse impacts to recreation, agriculture, hydropower generation, or any development activities.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(1) This rule would not "significantly or uniquely" affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that, if adopted, this rulemaking would not impose a cost of \$100 million or more in any given year on local or State governments or private entities. A Small

Government Agency Plan is not required. Small governments would not be affected because the NEP designation would not place additional requirements on any city, county, or other local municipalities.

(2) This rule would not produce a Federal mandate of \$100 million or greater in any year (*i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act). This NEP designation for bull trout would not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630 (76 FR 6733), this final rule does not have significant takings implications. This rule allows for the take of reintroduced bull trout when such take is incidental to an otherwise legal activity, such as recreation (*e.g.*, fishing, boating, wading, swimming), forestry, agriculture, hydroelectric power generation, and other activities that are in accordance with Federal, State, and local laws and regulations. Therefore, we do not believe that establishment of this NEP would conflict with existing or proposed human activities or hinder public use of the Clackamas River or its tributaries.

A takings implication assessment is not required because this rule: (1) Would not effectively compel a property owner to suffer a physical invasion of property, and (2) would not deny any economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate public interest (conservation and recovery of a listed fish species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132 (70 FR 23775), we have considered whether this final rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule would not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this final rule with the affected resource agencies in Oregon. Achieving the recovery goals for this species will contribute to its eventual delisting and return to State management. No intrusion on State

policy or administration is expected, roles or responsibilities of Federal or State governments would not change, and fiscal capacity would not be substantially directly affected. The final special rule operates to maintain the existing relationship between the State and the Federal governments and is being undertaken in coordination with the State of Oregon. We have cooperated with ODFW in the preparation of this final rule. Therefore, this final rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and meets the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. A Federal 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. This final rule does not include any new collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act

In compliance with all provisions of the National Environmental Policy Act of 1969 (NEPA), we have analyzed the impact of this rule. Based on this analysis and information resulting from public comment on the proposed action, we determined that this action will not have significant impacts or effects. We have prepared a final EA on this action, which is available for public inspection: (1) In person at the Oregon Fish and

Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section) and (2) online at <http://www.regulations.gov> or <http://www.fws.gov/oregonfwo/>. All appropriate NEPA documents were finalized before this rule was finalized.

Government-to-Government Relationship With Tribes

In accordance with the presidential memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 229511), Executive Order 13175 (65 FR 67249), and the Department of the Interior Manual Chapter 512 DM 2, we have considered possible effects on Federally recognized Indian Tribes and have determined that 2 percent of the acreage included in the Clackamas River subbasin, including the upper Clackamas and Oak Grove Fork drainage, is within the exterior boundaries of the reservation of the Confederated Tribes of the Warm Springs Reservation (CTWSRO). Furthermore, donor stock for the reintroduction will, in part, originate from a section of the Metolius River located within the exterior boundary of the CTWSRO reservation. Since 2007, the CTWSRO has been an active participant in the CRBTWG discussions on bull trout recovery in the Clackamas River basin. In August 2010, the CTWSRO Tribal Council passed a resolution supporting the utilization of bull trout from the Metolius River subbasin as donor stock for the Clackamas River bull trout reintroduction project. The resolution requested the Service and project partners consult with the CTWSRO on an annual basis regarding utilization of bull trout for the Clackamas reintroduction, and further, that annual schedules for donor stock collection, including locations, methodologies, precise numbers to be collected, and dates of collections, be coordinated with staff from the CTWSRO Natural Resources Program. The Service will continue to consult, on a government-to-government basis, with the CTWSRO for the duration of this Federal action.

Energy Supply, Distribution, or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this final rule is available at <http://www.regulations.gov> or upon request from the Oregon Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary author of this final rule is Chris Allen of the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for "Trout, bull" under "FISHES" in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * *							
FISHES							
* * * * *							
Trout, bull	<i>Salvelinus confluentus</i> .	U.S.A. (AK, Pacific NW into CA, ID, NV, MT) Canada (NW Territories).	U.S.A., coterminous (lower 48 states), except where listed as an experimental population.	T	637, 639E, 659, 670	17.95(e)	17.44(w), 17.44(x)
Trout, bull	<i>Salvelinus confluentus</i> .	U.S.A. (AK, Pacific NW into CA, ID, NV, MT) Canada (NW Territories).	Clackamas River subbasin and the mainstem Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel.	XN	.....	NA	17.84(v)
* * * * *							

■ 3. Amend § 17.84 by adding a new paragraph (w) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(w) Bull Trout (*Salvelinus confluentus*).

(1) *Where are populations of this fish designated as nonessential experimental populations (NEPs)?*

(i) The NEP area for the bull trout is within the species' historical range and is defined as follows: the entire Clackamas River subbasin as well as the mainstem Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel.

(ii) Bull trout are not currently known to exist in the Clackamas River subbasin or the mainstem Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel, in Oregon. Should any bull trout be found in the Willamette River within the NEP boundary, the U.S. Fish and Wildlife Service (Service) will assume the fish to be part of the reintroduced population, unless the fish is tagged or otherwise known to be from another population. Given the presence of suitable overwintering and forage habitat in the upper portion of the Clackamas River, as well as the geographic distance from spawning and rearing habitat in the upper Clackamas River to any overwintering and foraging habitat in the lower Clackamas and Willamette Rivers, we do not expect the reintroduced fish to become established outside the NEP. Bull trout found outside of the NEP boundary, but

known to be part of the NEP, will assume the status of bull trout within the geographic area in which they are found.

(iii) We do not intend to change the NEP designation to "essential experimental," "threatened," or "endangered" within the NEP area. Additionally, we will not designate critical habitat for the NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What take is allowed of this species in the NEP area?*

(i) Bull trout may be taken within the NEP area, provided that such take is:

(A) Not willful, knowing, or due to negligence.

(B) Incidental to and not the purpose of carrying out an otherwise lawful activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), agriculture, hydroelectric power generation, and other activities that are in accordance with Federal, State, Tribal, and local laws and regulations.

(C) Consistent with Oregon Department of Fish and Wildlife (ODFW) fishing regulations that have been coordinated with the Service, if due to fishing.

(D) Incidental to any activities related to or associated with the operation and maintenance of the Clackamas River Hydroelectric Project (FERC Project No. 2195) by Portland General Electric (PGE) as administered under a license issued by FERC. Acceptable forms of taking of bull trout include, but are not limited to, mortality, stranding, injury, impingement and entrainment at project facilities, or delay in up- or downstream passage associated with or caused by

any of the following activities. Activities related to the operation and maintenance of Project 2195 include, but are not limited to:

(1) Hydroelectric generation at any project facility;

(2) Maintenance of project facilities;

(3) Provision of upstream and downstream fish passage, whether through fish passage facilities, powerhouses, bypass facilities, bypass reaches, or spillways;

(4) Fish handling at fish separation and counting facilities;

(5) Fish removal from fish passage facilities and areas critical to downstream migrant passage testing at the time of testing (Bull trout removed for this testing do not need to be returned to the Clackamas River subbasin.);

(6) Fish conservation activities;

(7) Fish handling, tagging, and sampling in connection with FERC-approved studies; and

(8) Approved resource protection, mitigation, and enhancement measures.

(E) Consistent with the adaptive management process identified for this project including:

(1) The targeted relocation or possible removal of bull trout by the Service or our project partners, if bull trout are documented staging at the entrance to, within, or below, juvenile fish passage facilities within the Clackamas Hydroelectric Project; and

(2) Discontinuation of the reintroduction project and complete removal of bull trout from the Clackamas River if the Service determines, in consultation and coordination with the State of Oregon,

NMFS, and other project partners, and based on project monitoring and evaluation, that the reintroduction efforts cannot be carried out in a manner consistent with the recovery of threatened salmon and steelhead.

(ii) Any person with a valid permit issued by the Service under § 17.32 and a valid State permit issued by ODFW may take bull trout for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act.

(3) *What take of this species is not allowed in the NEP area?*

(i) Except as expressly allowed in paragraph (w)(2) of this section, all the provisions of § 17.31(a) and (b) apply to the fish identified in paragraph (w)(1) of this section.

(ii) Any manner of take not described under paragraph (w)(2) of this section or Oregon Revised Statute (ORS) 498.002 and Oregon Angling Regulations pursuant to ORS 498.002 is prohibited in the NEP area. Should State statutes or regulations change, take prohibitions will change accordingly. Any changes to State recreational fishing regulations pertaining to the experimental population of bull trout in the Clackamas River subbasin will be made by the State in collaboration with the Service. We may refer unauthorized take of this species to ODFW law enforcement authorities or Service law enforcement authorities for prosecution.

(iii) A person may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in a manner not expressly allowed in paragraph (w)(2) of this section, or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) A person may not attempt to commit, solicit another to commit, or cause to be committed any offense except the take expressly allowed in paragraph (w)(2) of this section.

(4) *How will the effectiveness of the reestablishment be monitored?*

(i) Effectiveness monitoring of the project will be conducted jointly by the Service and ODFW, with assistance from the U.S. Forest Service (USFS) and PGE.

(ii) We will monitor the effectiveness of the reintroduction during phase 1 of the project (2011–2017) by annually assessing: Distribution and movement, relative survival of translocated bull trout via presence and absence surveys, occurrence of spawning and reproduction, and genetic health, as measured against the donor population. These monitoring objectives will be accomplished by methodologies that include Passive Integrated Transponder (PIT) tagging of all fish translocated to the Clackamas River, radio tagging of the adult and subadult life stages, snorkel surveys, redd surveys, and minnow trapping.

(iii) If successful reproduction of reintroduced bull trout is detected, we will incorporate monitoring to assess the distribution, movement, growth, and survival of the initial cohorts of naturally produced bull trout.

(iv) Monitoring activities in phase 2 (2018–2024) and phase 3 (2025–2030) will be informed by phase 1 monitoring and evaluation.

(v) Annual reports that summarize the implementation and monitoring activities that occurred the previous year will be collaboratively developed by the Service, ODFW, and USFS.

(vi) We will evaluate the implementation strategy annually, and we will evaluate the reestablishment effort at the completion of phase 1 to determine whether to continue translocation of bull trout in phase 2.

(5) *What safeguards are in place to ensure the protection of Federally listed salmon and steelhead in the NEP area?*

(i) In consultation and coordination with the National Marine Fisheries Service (NMFS) and other project partners, we have developed a plan to facilitate management decisions

associated with potential impacts from the bull trout reintroduction on listed anadromous salmonids. If specific bull trout and/or anadromous salmonid thresholds are triggered, we will follow the planned management actions to minimize impacts to salmon and steelhead from the reintroduction of bull trout in the Clackamas River.

(ii) Our management actions implemented and the frequency of those actions, will be informed by:

(A) The reintroduction project's monitoring and evaluation program, jointly implemented by the Service, ODFW, and USFS; and

(B) The conservation status of the listed Clackamas River anadromous salmonid populations.

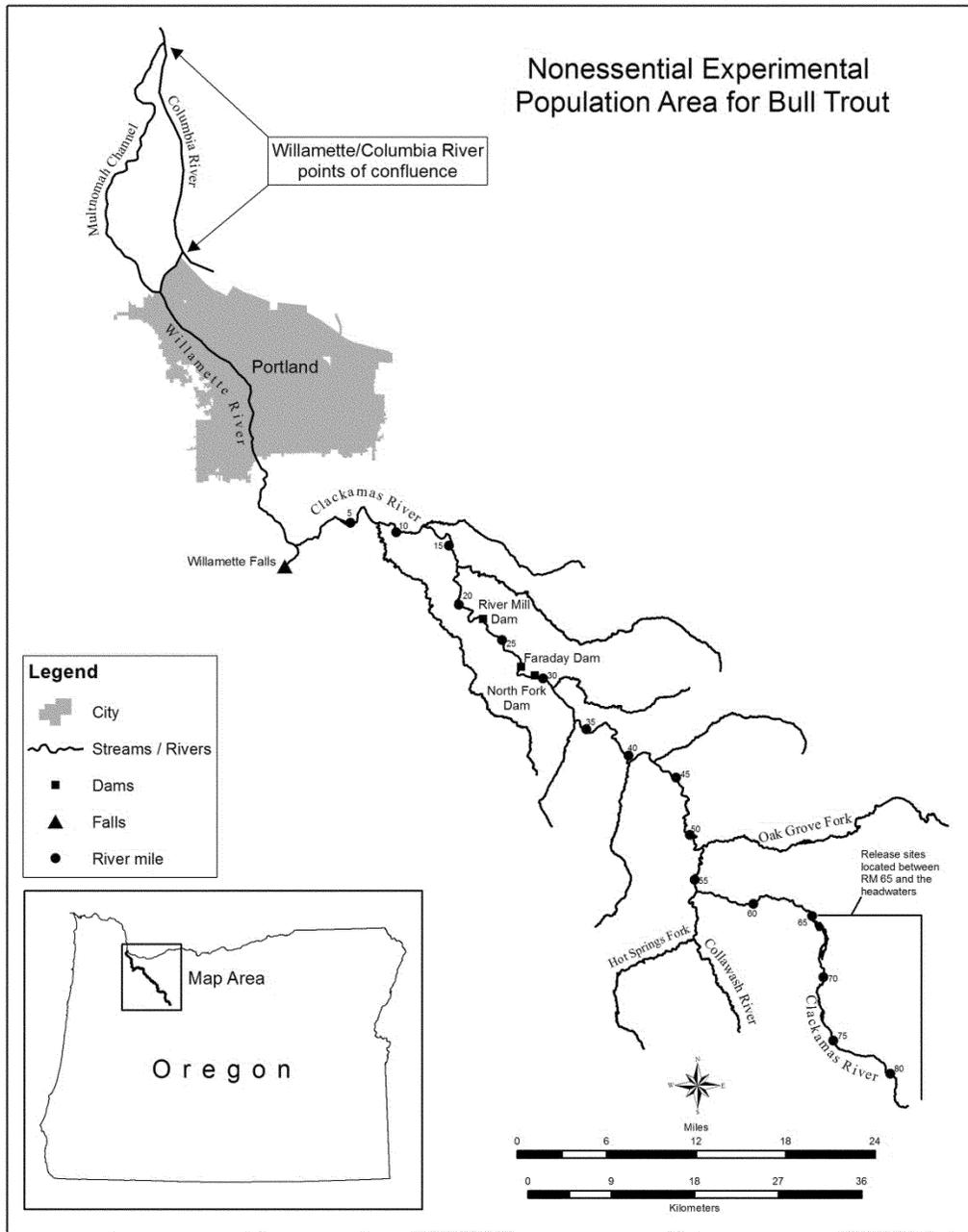
(iii) Because we cannot predict all likely impact scenarios and appropriate management responses, we will modify our plan as necessary, in consultation and coordination with NMFS, ODFW, and other project partners, consistent with the overall adaptive management of the project.

(iv) Although our analysis indicates a low likelihood for population-level impacts to Federally listed salmon and steelhead populations, if the Service determines, in consultation and coordination with the State of Oregon, NMFS, and other project partners, and based on project monitoring and evaluation, that the reintroduction efforts are not consistent with the recovery of salmon or steelhead, the reintroduction program will be discontinued and bull trout will be removed from the experimental population area.

(v) Prior to releasing bull trout into the Clackamas River, the Service will complete any required interagency cooperation with NMFS pursuant to section 7(a)(2) of the Act.

(6) *Note:* Map of the NEP area for bull trout in Oregon follows:

BILLING CODE 4310–55–P



Dated: June 13, 2011.

Rachel Jacobsen,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011-15370 Filed 6-20-11; 8:45 am]

BILLING CODE 4310-55-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

RIN 0648-AX09

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Operation and Maintenance of the Neptune Liquefied Natural Gas Facility of Massachusetts; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: NMFS, upon application from Neptune LNG LLC (Neptune), issued regulations pursuant to the Marine Mammal Protection Act (MMPA) to govern the unintentional taking of marine mammals, by harassment, incidental to port commissioning and operations, including maintenance and repair activities, at the Neptune Deepwater Port (the Port) in Massachusetts Bay for a period of 5 years. The final rule, which published in the **Federal Register** on June 13, 2011, contains an incorrect ending date

for the period of effectiveness. The rule was to be effective 30 days after the date of filing for publication in the **Federal Register**, which was Friday, June 10, 2011, through 5 years and 30 days after the date of filing for publication in the **Federal Register**. The effectiveness dates in the current final rule are listed as July 11, 2011, through August 10, 2016, which is 1 month too long. This notice corrects the period of effectiveness for the final rule.

DATES: Effective from July 11, 2011, through July 10, 2016.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 713-2289, ext 156.

SUPPLEMENTARY INFORMATION:

Need for Correction

On June 13, 2011, final regulations for the take of marine mammals incidental

to the operation and repair and maintenance of the Neptune Port off Massachusetts published in the **Federal Register** (76 FR 34157; FR Doc. 2011-14614). The period of effectiveness in that notice is listed as July 11, 2011, through August 10, 2016. This means that the rule would be effective for 5 years and 1 month. However, regulations issued pursuant to section 101(a)(5)(A) of the MMPA cannot be valid for a period of more than 5 consecutive years. Therefore, the period of effectiveness for the regulations now contained in 50 CFR 217.171 are effective from July 11, 2011, through July 10, 2016.

List of Subjects in 50 CFR Part 217

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: June 14, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For reasons set forth in the preamble, FR Doc. 2011-14614, published June 13, 2011, at 76 FR 34157, is corrected as follows:

■ 1. On page 34157, second column, the **DATES** section is revised to read as follows:

“DATES: Effective from July 11, 2011, through July 10, 2016.”

■ 2. On page 34172, third column, § 217.171 is revised to read as follows:

“§ 217.171 Effective dates.

Regulations in this subpart are effective from July 11, 2011, through July 10, 2016.”

[FR Doc. 2011-15318 Filed 6-20-11; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 76, No. 119

Tuesday, June 21, 2011

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Doc. No. AMS-FV-11-0025; FV11-958-1 PR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Modification of Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revisions to the handling regulation for onions handled under the Idaho-Eastern Oregon onion marketing order. The marketing order regulates the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon, and is administered locally by the Idaho-Eastern Oregon Onion Committee (Committee). This rule would revise the marketing order's handling regulation to allow special purpose shipments of onions for experimentation. The revision would allow the Idaho-Eastern Oregon onion industry to identify and develop new market niches and is expected to benefit producers, handlers, and consumers of onions. This proposal also announces the Agricultural Marketing Service's (AMS) intent to request a revision of the currently approved information collection requirements under the order.

DATES: Comments must be received by August 22, 2011.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and

page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT:

Barry Broadbent or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 805 SW., Broadway, Suite 930, Portland, OR 97205; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Barry.Broadbent@usda.gov or GaryD.Olson@usda.gov.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request

a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on revisions to the handling regulation for onions handled under the order. Specifically, this rule would revise the handling regulation to allow special purpose shipments of onions for the purpose of experimentation without regard to the minimum grade, size, maturity, pack, and inspection requirements of the order. The revision would give the Idaho-Eastern Oregon onion industry the opportunity to identify and develop new markets. The changes are expected to benefit producers, handlers, and consumers of onions. This rule was unanimously recommended by the Committee at its January 20, 2011, meeting.

Sections 958.42, 958.51, 958.52, and 958.60 of the order provide authority for assessment, mandatory inspection, and establishment of grade, size, quality, maturity, and pack regulations applicable to the handling of onions. Section 958.53 of the order provides authority for the issuance of special regulations, or the modification, suspension, or termination of requirements in effect pursuant to §§ 958.42, 958.52, 958.60, or any combination thereof, in order to facilitate the handling of onions for certain specified purposes.

Section 958.328 establishes minimum requirements for onions handled subject to the order. Currently, no person shall handle any lot of onions unless such onions are inspected, are at least "moderately cured", and meet the grade, size, maturity, and pack requirements of paragraphs (a), (b), and (c). Paragraph (e) delineates specific types of special purpose shipments that are exempt from the requirements of the order. Paragraph (f) outlines the safeguards for such special purpose shipments.

The Committee recommended the proposed revision to the handling

regulations to respond to the industry's desire to have greater flexibility in identifying and pursuing unique marketing opportunities for onions that do not conform to the requirements of the order. The concern from the onion industry is that onion producers and handlers within the order's production area are at a competitive disadvantage, relative to other onion producing regions, with respect to their ability to identify and develop new markets for non-standard onions. Adding authority to allow experimental onion shipments under the order would give handlers access to markets not currently available to them.

An example of a scenario that would demonstrate the benefits of such a provision to the industry would be a handler's desire to produce and ship a unique, irregularly shaped small onion (*i.e.*, a heart or a square shape) targeted for a newly developed niche market. Since irregular shape is a physical characteristic that does not conform to the order's grade requirements, such onions would ordinarily not be allowed to be handled under the marketing order. With an exemption for experimentation, however, the Committee could allow the shipment of those specific type onions while still maintaining the integrity of the order. Should the market for such onions grow to a significant size, the Committee could then incorporate changes into the handling regulations to accommodate their handling without the continued need for an exemption.

The potential for marketing opportunities like the one described above motivated the Committee to recommend modifying the handling regulation to add "experimentation" to the already established list of special purpose shipments allowed under the order. Shipments for experimental purposes would be exempt from the grade, size, maturity, pack, and inspection requirements of the handling regulation. Shipments made under the experimental exemption would continue to be subject to the assessment requirement of the order. With a special purpose shipment provision for experimentation, handlers would have greater flexibility in pursuing various types of unique marketing opportunities that are currently not available under the handling regulation.

The Committee would require handlers to request pre-approval for such experimental exemptions. Through the approval process, the Committee would be able to regulate the quantity and timing of such shipments. It is the goal of the Committee that any experimental shipments of onions

would be temporary in nature. At the point that the emerging experimental market were to reach a sufficient volume or continue for such a length of time as to be deemed sustainable by the Committee, the Committee could then recommend changes to the handling regulation requirements to accommodate the marketing of such onions on a permanent basis.

Initial Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

There are approximately 35 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and about 250 onion producers in the regulated area. Small agricultural service firms, which include onion handlers and receivers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000.

The National Agricultural Statistics Service (NASS) reported in the "Vegetables 2010 Summary," published in January 2011, that the total F.O.B. value of onions in the regulated production area for 2010 was \$133,041,000. Based on an industry estimate of 35 handlers, the average value of onions handled per handler is \$3,801,000, well below the SBA threshold for defining small agricultural service firms. In addition, based on an industry estimate of 250 producers, the average F.O.B. value of onions produced in the industry is \$532,164 per producer. Since the F.O.B. value is usually significantly higher than the farm gate value that the producers actually receive, most onion producers within the order's production area would be considered small agricultural producers under the SBA definition. Therefore, it can be concluded that the majority of handlers and producers of Idaho-Eastern Oregon onions may be

classified as small entities as defined by the SBA.

This rule would revise § 958.328(e) of the order's handling regulation to allow special purpose shipments of onions for the purpose of experimentation without regard to the minimum grade, size, maturity, pack, and inspection requirements currently prescribed under paragraphs (a), (b), and (c) of § 958.328. The recommended revision would allow the Idaho-Eastern Oregon onion industry to identify and develop new markets for non-standard onions that are currently not open to them. The changes are expected to benefit producers, handlers, and consumers of onions.

At the January 20, 2011 meeting, the Committee discussed the impact of the recommended changes on handlers and producers in terms of increased costs. The Committee believes that, since this proposed change exempts certain shipments of onions from regulation, this action would not add any additional requirements or costs relative to the existing regulation. Since the utilization of the special purpose shipment provision is voluntary in nature, any additional regulatory burden placed on a handler as a result of this proposed rule would be by their choice. The proposed changes may, however, create opportunities for producers and handlers to develop new markets and to enhance revenues. The Committee believes that the potential benefit associated with this proposed action outweighs any potential increase in administrative cost or regulatory burden incurred by the handler.

The Committee discussed various alternatives to adding experimental shipments to the list of special purpose shipment exemptions contained in the order's handling regulation. Some members suggested that the provision was too broad in scope and needed greater restrictions. After deliberation, the Committee concluded that it would be impossible to anticipate what might be "experimental" in the future and that affording the greatest latitude to the provision, while maintaining strict Committee oversight, was in the best interest of the industry. The Committee also considered taking no action with regard to adding an experimental shipment provision, citing the potential for abuse. After deliberation, the Committee agreed that the experimental shipment provision is needed to respond to changes in the industry and that there would be sufficient safeguards to protect the integrity of the order.

This proposed rule would impose additional reporting burdens on handlers who make special purpose shipments of experimental onions. This

action would require the modification of two existing Committee forms and an increase in burden hours for three existing forms. The information collection requirements are discussed later in this document. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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

In addition, the Committee's meeting was widely publicized throughout the onion industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the January 20, 2011 meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS is requesting the Office of Management and Budget's (OMB) approval for a revision to currently approved forms used to collect information under this marketing order. Once the modified forms are approved, they will be merged with the forms contained in OMB No. 0581-0178 "Generic OMB Vegetable Crops."

Title: Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Marketing Order No. 958.

OMB Number: 0581-0178.

Type of Request: Revision of a currently approved information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Idaho-Eastern Oregon onion marketing order.

On January 20, 2011, the Committee unanimously recommended revising the handling regulation to allow special purpose shipments of onions for experimentation. To maintain the handling regulation safeguards, the proposed action would require minor revisions to three previously approved Committee forms: FV-34, FV-35, and FV-36.

Safeguard requirements in the order's handling regulation require each handler making special purpose shipments outside the production area to furnish an *Application to Make Special Purpose Shipments—Certificate of Privilege, Form FV-34* to the Committee. The FV-34 form would be modified as a result of this proposed action by adding "Experimentation" to the list of approved purposes for special purpose onion shipments. In addition, the words "except as expressly authorized by the Committee" would be added to the end of the first sentence of the form's certification statement. The proposed modifications to the form are not expected to increase the time it takes each handler to complete the form. The FV-34 form has already been approved for 10 burden hours by OMB. However, the estimated number of respondents is expected to increase as a result of this proposed action. As such, the total burden hours would need to be increased to account for that change.

Also, after an approved handler has shipped and billed or consigned a special purpose onion shipment or shipments, the handler shall furnish to the Committee an *Onion Diversion Report, Form FV-35* to report the number of shipments and the quantity of onions shipped under the Certificate of Privilege. No modification to this form would be required as a result of the proposed action. This form has already been approved for 266 burden hours by OMB. As a result of this proposed action, however, the estimated number of respondents is expected to increase. Accordingly, the total burden hours would need to be increased to account for that change.

In addition, as authorized in the order's handling regulation safeguards, the Committee may contact the receiver or receiver's agent of special purpose onion shipments for verification and request that such receiver or receiver's agent complete a *Special Purpose Shipment Receiver Certification, Form*

FV-36. The FV-36 form would be modified as a result of this proposed action by adding "Experimentation" to the list of approved outlets for special purpose onion shipments. In addition, the words "except as expressly authorized by the Committee" would be added to the end of the first sentence of the form's certification statement. The proposed modifications to the form are not expected to increase the time it takes each handler to complete the form. This form has already been approved for 1.67 burden hours by OMB. However, the estimated number of respondents is expected to increase as a result of this proposed action. Consequently, the total burden hours would need to be increased to account for that change.

The information collected will be used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters' staff, and authorized Committee employees. Authorized Committee employees are the primary users of the information and AMS is the secondary user.

The request for approval of the modification of information collection under the order is as follows:

Application to Make Special Purpose Shipments—Certificate of Privilege.

As discussed previously, *Form FV-34, Application to Make Special Purpose Shipments—Certificate of Privilege*, is already approved under OMB No. 0581-0178, for 10 hours (25 respondents \times 3 responses per respondent \times .133 hours per response, for a total of 10 burden hours). Because the number of respondents is expected to increase from 25 to 30, the estimated total burden is now 12 hours (30 respondents \times 3 responses \times .133 hours). As a result of this proposed action, the burden is being increased by 2 hours.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 minutes. There is no change from the previous estimate.

Respondents: Idaho-Eastern Oregon onion handlers.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 12 hours.

Onion Diversion Report

Also as mentioned previously, *Form FV-35, Onion Diversion Report*, is already approved under OMB No. 0581-0178, for 266 hours (20 respondents \times 100 responses per respondent \times .133 hours per response, for a total of 266 burden hours). Because the number of respondents is expected to increase

from 20 to 25, the estimated total burden is now 333 hours (25 respondents \times 100 responses \times .133 hours). As a result of this action, the burden is being increased by 67 hours.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 minutes. There is no change from the previous estimate.

Respondents: Idaho-Eastern Oregon onion handlers.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 100.

Estimated Total Annual Burden on Respondents: 333 hours.

Special Purpose Shipment Receiver Certification

Additionally, as previously mentioned, *Form FV-36, Special Purpose Shipment Receiver Certification*, is already approved under OMB No. 0581-0178, for 1.67 hours (50 respondents \times 1 responses per respondent \times .033 hours per response, for a total of 1.67 burden hours).

Because the number of respondents is expected to increase from 50 to 60, the estimated total burden is now 2 hours (60 respondents \times 1 responses \times .033 hours). As a result of this action, the burden is being increased by .33 hours.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 minutes. There is no change from the previous estimate.

Respondents: Receivers of special purpose shipments of Idaho-Eastern Oregon onions.

Estimated Number of Respondents: 60.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2 hours.

Comments: Comments are invited on:

(1) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-0178 and the Marketing Order for Onions Grown in Certain Counties of

Idaho, and Malheur County, Oregon, and be sent to the USDA in care of the Docket Clerk at the previously mentioned address. All comments timely received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Upon OMB approval, this collection will be merged with the forms currently approved for use under OMB No. 0581-0241 "Generic OMB Vegetable Crops." As mentioned previously, all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth above, 7 CFR part 958 is proposed to be amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 958.328, revise paragraph (e) and paragraph (f) introductory text to read as follows:

§ 958.328 Handling regulation.

* * * * *

(e) *Special purpose shipments.* (1) The minimum grade, size, maturity, pack, assessment, and inspection requirements of this section shall not be applicable to shipments of onions for any of the following purposes:

- (i) Planting,
- (ii) Livestock feed,
- (iii) Charity,
- (iv) Dehydration,
- (v) Canning,
- (vi) Freezing,
- (vii) Extraction,
- (viii) Pickling, and
- (ix) Disposal.

(2) Shipments of onions for the purpose of experimentation, as approved by the Committee, may be made without regard to the minimum

grade, size, maturity, pack, and inspection requirements of this section. Assessment requirements shall be applicable to such shipments.

(3) The minimum grade, size, and maturity requirements set forth in paragraph (a) of this section shall not be applicable to shipments of pearl onions, but the maximum size requirement in paragraph (h) of this section and the assessment and inspection requirements shall be applicable to shipments of pearls onions.

(f) *Safeguards.* Each handler making shipments of onions outside the production area for dehydration, canning, freezing, extraction, pickling, or experimentation pursuant to paragraph (e) of this section shall:

* * * * *

Dated: June 15, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011-15445 Filed 6-20-11; 8:45 am]

BILLING CODE 3410-02-P

FEDERAL ELECTION COMMISSION

11 CFR Part 109

[Notice 2011-09]

Rulemaking Petition: Independent Expenditure Reporting

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition: Notice of availability.

SUMMARY: On April 21, 2011, the Commission received a Petition for Rulemaking from Representative Chris Van Hollen. The Petition urges the Commission to revise and amend the regulations at 11 CFR 109.10(e)(1)(vi) regarding the reporting of independent expenditures by persons other than political committees. The Petition is available for inspection in the Commission's Public Records Office, on its website, <http://www.fec.gov/fosers/>, and through its Faxline service.

DATES: Statements in support of or in opposition to the Petition must be submitted on or before August 22, 2011.

ADDRESSES: All comments must be in writing. Comments may be submitted electronically via the Commission's Web site at <http://www.fec.gov/fosers/>. Commenters are encouraged to submit comments electronically to ensure timely receipt and consideration. Alternatively, comments may be submitted in paper form. Paper comments must be sent to the Federal Election Commission, Attn.: Robert M. Knop, Assistant General Counsel, 999 E

Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of a commenter, and of each commenter if filed jointly, or they will not be considered. The Commission will post comments on its website at the conclusion of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Ms. Cheryl A. F. Hemsley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission (“Commission”) has received a Petition for Rulemaking from United States Representative Chris Van Hollen. The petitioner asks that the Commission revise and amend 11 CFR 109.10(e)(1)(vi) “relating to disclosure of donations made to persons [other than political committees], including corporations and labor organizations, which make independent expenditures, in order to conform the regulation with the law.” The Commission seeks comments on the petition.

Copies of the Petition for Rulemaking are available for public inspection at the Commission’s Public Records Office, 999 E Street, NW., Washington, DC 20463, Monday through Friday between the hours of 9 a.m. and 5 p.m., and on the Commission’s Web site, <http://www.fec.gov/fosers/>. Interested persons may also obtain a copy of the Petition by dialing the Commission’s Faxline service at (202) 501-3413 and following its instructions, at any time of the day and week. Request document #271.

Consideration of the merits of the Petition will be deferred until the close of the comment period. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: June 15, 2011.

Cynthia L. Bauerly,
Chair, Federal Election Commission.

[FR Doc. 2011-15328 Filed 6-20-11; 8:45 am]

BILLING CODE 6715-01-P

FEDERAL ELECTION COMMISSION

11 CFR Part 114

[Notice 2011-08]

Rulemaking Petition: Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition: Notice of Availability.

SUMMARY: On January 26, 2010, the James Madison Center for Free Speech submitted to the Commission a Petition for Rulemaking. The Petition urges the Commission to conform its regulations regarding independent expenditures and electioneering communications made by corporations, membership organizations, and labor organizations to the decision of the Supreme Court in *Citizens United v. FEC*. The Petition is available for inspection in the Commission’s Public Records Office, on its Web site, <http://www.fec.gov/fosers/>, and through its Faxline service.

DATES: Statements in support of or in opposition to the Petition must be submitted on or before August 22, 2011.

ADDRESSES: All comments must be in writing. Comments may be submitted electronically via the Commission’s Web site at <http://www.fec.gov/fosers/>. Commenters are encouraged to submit comments electronically to ensure timely receipt and consideration. Alternatively, comments may be submitted in paper form. Paper comments must be sent to the Federal Election Commission, Attn.: Robert M. Knop, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of a commenter, and of each commenter if filed jointly, or they will not be considered. The Commission will post comments on its Web site at the conclusion of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Ms. Cheryl A.F. Hemsley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION:

The Federal Election Commission (“Commission”) has received a Petition for Rulemaking from the James Madison Center for Free Speech. The petitioner asks that the Commission conform FEC regulations at 11 CFR 114.2, 114.4, 114.9, 114.10, 114.14, and 114.15 to the decision of the Supreme Court in *Citizens United v. FEC*, 558 U.S., 130 S. Ct. 876 (2010) allowing corporations, membership organizations, and labor organizations to make independent expenditures and electioneering communications. The Commission seeks comments on the petition.

Copies of the Petition for Rulemaking are available for public inspection at the Commission’s Public Records Office, 999 E Street, NW., Washington, DC 20463, Monday through Friday between

the hours of 9 a.m. and 5 p.m., and on the Commission’s Web site, <http://www.fec.gov/fosers/>. Interested persons may also obtain a copy of the Petition by dialing the Commission’s Faxline service at (202) 501-3413 and following its instructions, at any time of the day and week. Request document #272.

Consideration of the merits of the Petition will be deferred until the close of the comment period. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: June 15, 2010.

Cynthia L. Bauerly,
Chair, Federal Election Commission.

[FR Doc. 2011-15327 Filed 6-20-11; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 36

[Docket No. FAA-2011-0629; Notice No. 11-04]

RIN 2120-AJ76

Noise Certification Standards for Tiltrotors

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This rulemaking would establish noise certification standards for issuing type and airworthiness certificates for a new civil, hybrid airplane-rotorcraft known as the tiltrotor. This rule proposes to adopt the same recommended guidelines for noise certification found in the International Civil Aviation Organization (ICAO) Annex 16, Volume 1, Chapter 13, Attachment F (Amendment 7) for tiltrotors certificated in the United States (U.S.). The ICAO recommended practices are already harmonized internationally, and the adoption as standards into our regulations would be consistent with the Federal Aviation Administration’s (FAA) goal of harmonizing U.S. regulations with international standards.

The proposed standards would apply to the issuance of the original type certificate, changes to the type certificate, and standard airworthiness certificates for tiltrotors.

DATES: Send your comments on or before October 19, 2011.

ADDRESSES: You may send comments identified by Docket Number [Insert docket number, for example, FAA–2011–0629] using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.

- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to <http://www.regulations.gov>, including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at <http://DocketsInfo.dot.gov>.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact Sandy Liu, AEE–100, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 493–4864; facsimile (202) 267–5594; e-mail: sandy.liu@faa.gov. For legal questions concerning this proposed rule contact Karen Petronis, AGC–200, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3073; e-mail: karen.petronis@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart III, section 44715, Controlling aircraft noise and sonic boom. Under that section, the FAA is charged with prescribing regulations to measure and abate aircraft noise. This proposed regulation is within the scope of that authority since it would establish new noise certification test procedures and noise limits for a new class of aircraft. Applicants for type certificates, changes in type design, and airworthiness certificates for tiltrotors would be required to comply with these new regulations.

Background

A new aircraft type known as a tiltrotor is currently in development after more than six decades. The aircraft uses a hybrid of propellers and helicopter rotors to provide both lift and propulsive force using rotating nacelles. The aircraft is designed to function as a helicopter for takeoff and landing and as an airplane during the en-route portion of flight operations.

The most recognizable tiltrotor operating today is the V–22 Osprey used by the U.S. Marines and the U.S. Air Force. The V–22 Osprey was tailored for the Department of Defense Special Operations Forces and can transport 24 fully equipped troops. The proposed civil version of the tiltrotor would carry up to nine passengers.

The tiltrotor concept was first explored for the U.S. Army in the mid-1950s as a convertiplane concept that incorporated mixed vertical and forward flight capabilities. In 1958, Bell Helicopter Textron Inc. (Bell) of Fort Worth, Texas developed the XV–3 tiltrotor for a joint research program between the U.S. Army and the U.S. Air Force. The Bell XV–3 completed a successful full conversion from vertical flight to forward cruise and demonstrated the feasibility of tiltrotor technology. Following the U.S. Army and National Aeronautics and Space Administration prototype development contract award to Bell in the mid-1970s, two Bell XV–15 tiltrotor demonstrator aircraft were built as predecessors to the V–22 Osprey to demonstrate mature tiltrotor technology and flight capabilities.

ICAO Noise Certification Standards

The ICAO is the international body with responsibility for the development of International Standards and Recommended Practices pursuant to the Convention on International Civil Aviation (the Chicago Convention). Consistent with their obligations under the Chicago Convention, Contracting States agree to implement ICAO standards in their national regulations to the extent practicable. The standards for aircraft noise are contained in Annex 16, Environmental Protection, Volume 1, Aircraft Noise.

In anticipation of civil tiltrotor production, ICAO's Committee on Aviation Environmental Protection (CAEP) chartered the Tiltrotor Task Group (TRTG) to develop noise certification guidelines for tiltrotors in 1997. The FAA participated in the TRTG and its development of the tiltrotor noise guidelines from 1997 to 2000. The ICAO tiltrotor guidelines used the same noise limits that the United States had incorporated into part 36, Appendix H for helicopter noise certification. The ICAO has included additional requirements that are unique to the design of tiltrotors.

On June 29, 2001, the TRTG's guidelines were adopted by the ICAO Council for incorporation into Annex 16, Volume 1, Chapter 13, Attachment F (Amendment 7). The ICAO guidelines became effective on October 29, 2001, with an applicability date of March 21, 2002.

Statement of the Problem

Current regulations in part 36 do not contain noise certification requirements specific to the tiltrotor and its unique flight capabilities. Since no standards for the tiltrotor currently exist, the FAA proposes to adopt the guidelines through rulemaking and add the new standards to part 36 and amend § 21.93 (Classification of Changes in Type Design) to accommodate certification of the tiltrotor. In order to harmonize the U.S. regulations with the international standards, this rulemaking proposes the adoption of the same noise certification guidelines used in ICAO Annex 16, Volume 1, Chapter 13, Attachment F (Amendment 7) for tiltrotors.

Application for Type Certification

As the tiltrotor concept and technology proved promising with the production of the V–22 Osprey, Bell and Agusta-Westland established a joint business venture in 1998 to co-develop the Bell/Agusta model BA609 civil tiltrotor.

In August 1996, Bell applied for a U.S. type certificate for the model

BA609 tiltrotor. The BA609 would be type certificated as a “special class” of aircraft under §§ 21.17 and 21.21, using the applicable airworthiness provisions of part 25 (Airworthiness Standards: Transport Category Airplanes) and part 29 (Airworthiness Standards: Transport Category Rotorcraft). This is the first application for this class of aircraft. Bell is targeting existing helicopter operators as the primary civil market for the BA609, and has stated the BA609 could operate from existing heliports without the need for new infrastructure to accommodate the aircraft.

General Discussion of the Proposal

The standards proposed in this rulemaking would apply to the issuance of an original type certificate, changes to a type certificate, and the issuance of a standard airworthiness certificate for tiltrotors. This rulemaking proposes noise certification standards that would be applicable to all tiltrotors, including the Bell/Agusta Model BA609, which is currently under development. This rule proposes to incorporate the guidelines of ICAO Annex 16, Volume 1, Chapter 13, Attachment F (Amendment 7) for tiltrotors, consistent with the FAA goal of harmonization of regulations with international standards.

These proposed regulations would:

- Amend § 21.93 for acoustical changes in type design to add the tiltrotor as a class of aircraft;
- Amend § 36.1 noise certification standards for the issuance of type and airworthiness certificates for the new tiltrotor class of aircraft (including the definitions and applicability);
- Add a new § 36.13 acoustical change requirements for tiltrotors;
- Add a new subpart K to part 36 that includes noise measurement, evaluation and calculation criteria and maximum noise limits of tiltrotors;
- Add a new Appendix K to part 36 that includes noise certification standards (including the reference test conditions and reference test procedures) for tiltrotors certificated in the United States.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined there would be no new requirement for information collection associated with this proposed rule. The

requirements are the same as for any other new aircraft type certification.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform our regulations to ICAO Standards and Recommended Practices to the maximum extent practicable. In 2001, ICAO adopted tiltrotor noise guidelines. This proposed regulation will harmonize U.S. noise standards with the international standards by adopting the same requirements, adapted for the U.S. regulatory format.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA’s analysis of the economic impacts of this proposed rule. Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect

and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

- (1) Has benefits that justify its costs,
- (2) Is not an economically “significant regulatory action” as defined in section 3(f) of Executive Order 12866;
- (3) Would not have a significant economic impact on a substantial number of small entities;
- (4) Would not have a significant effect on international trade; and
- (5) Would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the monetary threshold identified.

These analyses are summarized below.

The tiltrotor aircraft is a new class of aircraft. Currently there are no part 36 certification standards for tiltrotor aircraft. This proposed rule would provide for the part 36 certification requirements for this new class of aircraft. The benefit of this proposed rule is that it would allow the startup and development of a market for a new class of aircraft, the tiltrotor. The FAA believes that this would result in substantial benefits.

The potential size of the tiltrotor market can be estimated by the sales projections of the current developer, Bell/Agusta. In the next 10 years, only one model of tiltrotor is expected to be available, the BA609 currently in development. The price of a BA609 is expected to be \$10 to \$14 million, up from the original estimate of \$7 million to the current \$14 million. When first priced in 2000, the \$7 million price was equivalent to the replacement value of a Bell 412 helicopter. The BA609 has unique capabilities, such as vertical takeoff and landing, combined with the speed and range of a turboprop airplane.

Bell estimates that it will sell approximately 100 BA609s, making the potential near-term tiltrotor market worth a nominal \$1 billion to \$1.4 billion. Table 1 shows the nominal and present value estimates of the tiltrotor market. The present value is based on a 7 percent discount rate, and a ten year production period with 10 tiltrotors being delivered each year. The present value of the tiltrotor market is estimated to be between \$702,000,000 and \$983,000,000.

TABLE 1—NOMINAL AND PRESENT VALUE OF TILTROTOR MARKET AT A 14,000,000 AND 10,000,000 SELLING PRICE

Year	Units produced	Unit price	Total market value		Unit price	Total market value	
			Nominal	Present value @ 7%		Nominal	Present value @ 7%
1	10	\$14,000,000	\$140,000,000	\$138,844,000	\$10,000,000	\$100,000,000	\$93,460,000
2	10	14,000,000	140,000,000	122,276,000	10,000,000	100,000,000	87,340,000
3	10	14,000,000	140,000,000	114,282,000	10,000,000	100,000,000	81,630,000
4	10	14,000,000	140,000,000	106,806,000	10,000,000	100,000,000	76,290,000
5	10	14,000,000	140,000,000	99,820,000	10,000,000	100,000,000	71,300,000
6	10	14,000,000	140,000,000	93,282,000	10,000,000	100,000,000	66,630,000
7	10	14,000,000	140,000,000	87,178,000	10,000,000	100,000,000	62,270,000
8	10	14,000,000	140,000,000	81,480,000	10,000,000	100,000,000	58,200,000
9	10	14,000,000	140,000,000	76,146,000	10,000,000	100,000,000	54,390,000
10	10	14,000,000	140,000,000	71,162,000	10,000,000	100,000,000	50,830,000
Totals	100	N.A.	1,400,000,000	983,276,000	N.A.	1,000,000,000	702,340,000

3/29/2011.

Table 2 shows the incremental manufacturer costs for the noise certification of a civil tiltrotor aircraft. The costs consist of four major items: Acoustics; Flight Test; Aircraft; and Miscellaneous. For tiltrotor aircraft noise certification, as for any aircraft certification, the noise demonstration flight testing and reporting is the major incremental cost.

To meet the proposed requirements of noise control, acoustical measurements are used to quantify the characteristic noise levels of the aircraft. Almost half the expense (\$250,000) is invested in the acoustics group equipment and analysis. This cost includes overall noise test planning and coordination, noise test site preparation and measurement set-up.

The next highest expense involves the support of the flight test group (\$220,000). These expenses are needed

to configure and prepare the aircraft to execute the required noise flight test procedures.

The last two major expense groups are aircraft and miscellaneous expenses. The aircraft expense (\$50,000) involves costs associated with aircraft flight time, fuel, and flight crew support. Most other general expenses of test support are miscellaneous costs (\$68,000).

Issuance of a type certificate requires compliance with the applicable noise certification requirements of part 36. Full noise certification testing is generally required for new aircraft types and for certain voluntary changes to type design that are classified as acoustical change under § 21.93(b). The incremental costs recur only when a new type certificate is issued, or when a change to a type design results when an acoustical change is made.

As shown in Table 2, the estimated total incremental cost of a single noise

certification is \$588,000. As the \$588,000 would be incurred in the first year, the nominal value equals the present value. The cost estimates for noise certification were prepared by Bell Helicopter Textron. The cost of noise certification for the tiltrotor is comparable to that for a large helicopter (over 7,000 pounds). Since noise testing is required for new aircraft to gain U.S. certification, the cost burden is comparable and does not impose any unexpected burden on manufacturers.

The FAA may incur costs in this certification process, including the adoption of the new regulations. However, these costs are not expected to vary significantly from the agency's current costs to noise certificate any other new aircraft type.

Based on the above analyses, this proposed rule is considered to be a minimal cost rule.

TABLE 2—ESTIMATED NOISE CERTIFICATION COSTS FOR A CIVIL TILTROTOR AIRCRAFT

Item	Hours	Cost per hour	Total cost
Acoustics Group Items			
Test Plan.			
Test Coordination.			
Acoustics/Met/TSPi setup.			
Site Coordination/Survey/Preparation.			
Instrument Calibration.			
Testing.			
Data Reduction.			
Data Report.			
Hours & Costs Acoustic Group	2,000	\$125	\$250,000
Flight Test Groups			
Airspeed Cal.			
Statement of Conformity.			
Instrument Calibration.			
TSPi pilot guidance and off-site ground station development.			
Aircraft mods to production-representation configuration.			
Aircraft instrumentation buildup special to noise tests.			

TABLE 2—ESTIMATED NOISE CERTIFICATION COSTS FOR A CIVIL TILTROTOR AIRCRAFT—Continued

Item	Hours	Cost per hour	Total cost
Testing.			
Aircraft data archiving.			
Hours & Costs Flight Test Groups	2,000	110	220,000
Aircraft			
(Flight time: Instrumentation check out; ferry; & test)			
Miscellaneous flight time	2	5,000	10,000
Test flight time	8	5,000	40,000
Hours & Costs—Aircraft	10	.....	50,000
Miscellaneous Expenses			
Test site lease .....	.....	.....	10,000
Off-site equipment rental & supplies .....	.....	.....	10,000
Equipment shipping & local transportation costs (cars, pickups) .....	.....	.....	15,000
Travel, food, and hotel costs (10 people* 14 days* \$200/day + \$500 airfare per person) .....	.....	.....	33,000
Costs—Miscellaneous Expenses .....	.....	.....	68,000
Total Hours & Costs	4,010	N.A.	588,000

Source: Bell Helicopter Textron, 04/01/2011.

Since the tiltrotor industry is still developing, the costs and benefits discussed are based on a single tiltrotor program. The proposed rule would require the noise certification of a tiltrotor aircraft type. While the estimated benefits and costs are based on a single tiltrotor type, we believe the benefits will exceed the costs for any future designs. Bell Agusta anticipates selling 100 tiltrotor aircraft, allowing a \$1 to \$1.4 billion (\$700 million to \$1 billion in present value) new market to start up and develop.

The present value cost of the proposed rule is \$588,000 for the certification of one aircraft type. The estimated 100 tiltrotor aircraft that would be sold would be covered under this type certificate, unless major modifications were made that would change the original certification. Therefore, the total present value cost of the proposed rule is \$588,000, which the FAA considers to be minimal.

Although the FAA cannot quantify the benefits of the proposed rule, the FAA believes that the benefits would be substantial. Because of this and the minimal cost nature of the proposed rule the FAA believes that the proposed rule would be cost beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational

requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Tiltrotor Manufacturers

Size standards for small entities are published by the Small Business Administration (SBA) on their Web site at <http://www.sba.gov/size>. The size standards used herein are from “SBA U.S. Small Business Administration, Table of Small Business Size Standards,

Matched to North American Industry Classification System Codes”. The Table is effective November 5, 2010, and uses the 2007 NAICS codes. All aircraft manufacturers are listed in Sector 31–33—Manufacturing; Subsector 336—Transportation Equipment Manufacturing; NAICS Code 336411—Aircraft Manufacturing. The small entity size standard is 1,500 employees.

Bell Helicopter is a wholly owned subsidiary of Textron Inc. Bell Helicopter employed approximately 9,800 employees at the end of 2009 while Textron employed approximately 32,000 employees. (Textron Fact Book 2009). Agusta-Westland is a wholly owned subsidiary of Finmeccanica. Agusta-Westland employed 13,886 employees at September 30, 2010 while Finmeccanica employed 75,733 employees. (Finmeccanica Press Release, Rome, 3 November 2010) Since the only tiltrotor manufacturer, Bell Helicopter, employs more than 1,500 employees, there are no small-entity tiltrotor manufacturers.

Consequently, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small tiltrotor manufacturers.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create

unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that it would encourage international trade by using international standards as the basis for a rule for the noise certification of tiltrotors.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action". The FAA currently uses an inflation-adjusted value of \$140.8 million in lieu of \$100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action 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, and, therefore, would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. This rule adopts internationally established noise guidelines for a new civil, hybrid airplane-rotorcraft known as the tiltrotor. Based on the dual

helicopter and propeller airplane characteristics inherit in the tiltrotor, the noise guidelines utilize preexisting helicopter noise certification limits and procedures. This rule adopts these noise limits to control the harshest (maximum) noise levels when the tiltrotor operates in its noisiest configuration—helicopter mode. In airplane mode, the tiltrotor is significantly quieter given its low cruise RPM design. The FAA finds the applicability of the noise guidelines to be technologically and environmentally consistent for this new class of aircraft. The tiltrotor will function as a helicopter and will follow the same helicopter noise certification requirements, thus maintaining a comparable level of environmental protection.

The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency determined that it is not a "significant energy action" under the executive order, it is not a "significant regulatory action" under Executive Order 12866 and DOT's Regulatory Policies and Procedures, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies or
3. Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the docket or notice number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 36

Aircraft, Noise control.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations, as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701-44702, 44704, 44707, 44709, 44711, 44713, 44715, 45303.

2. Amend § 21.93 by adding paragraph (b)(5) to read as follows:

§ 21.93 Classification of changes in type design.

* * * * *

(b) * * *

(5) Tiltrotors.

* * * * *

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

3. The authority citation for part 36 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715; sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902.

4. Amend § 36.1 as follows:

A. Add paragraph (a)(5);

B. Amend paragraph (c) by removing the phrase “or 36.11” and adding the phrase “36.11 or 36.13” in its place; and

C. Add paragraph (i).

The additions and revisions read as follows:

§ 36.1 Applicability and definitions.

* * * * *

(a) * * *

(5) Type certificates, changes to those certificates, and standard airworthiness certificates, for tiltrotors.

* * * * *

(i) For the purpose of showing compliance with this part for tiltrotors, the following terms have the specified meanings:

Airplane mode means a configuration with nacelles on the down stops (axis aligned horizontally) and rotor speed set to cruise revolutions per minute (RPM).

Airplane mode RPM means the lower range of rotor rotational speed in RPM defined for the airplane mode cruise flight condition.

Fixed operation points mean designated nacelle angle positions selected for airworthiness reference. These are default positions used to refer to normal nacelle positioning operation of the aircraft. The nacelle angle is controlled by a self-centering switch.

When the nacelle angle is 0 degrees (airplane mode) and the pilot moves the nacelle switch upwards, the nacelles are programmed to automatically turn to the first default position (for example, 60 degrees) where they will stop. A second upward move of the switch will tilt the nacelle to the second default position (for example, 75 degrees). Above the last default position, the nacelle angle can be set to any angle up to approximately 95 degrees by moving the switch in the up or down direction. The number and position of the fixed operation points may vary on different tiltrotor configurations.

Nacelle angle is defined as the angle between the rotor shaft centerline and the longitudinal axis of the aircraft fuselage.

Tiltrotor means a class of aircraft capable of vertical take-off and landing, within the powered-lift category, with rotors mounted at or near the wing tips that vary in pitch from near vertical to near horizontal configuration relative to the wing and fuselage.

Vertical takeoff and landing (VTOL) mode means the aircraft state or configuration having the rotors orientated with the axis of rotation in a vertical manner (i.e., nacelle angle of approximately 90 degrees) for vertical takeoff and landing operations.

V_{CON} is defined as the maximum authorized speed for any nacelle angle in VTOL/Conversion mode.

V_{MCP} is defined as the maximum level flight airspeed for airplane mode corresponding to minimum specification engine power corresponding to maximum continuous power available for sea level pressure of 2,116 pounds per square foot (1,013.25 hPa), at 77° Fahrenheit (25° Celsius) ambient conditions at the relevant maximum certificated weight (mass).

V_{MO} is defined as the maximum airspeed in airplane mode that may not be deliberately exceeded.

VTOL/Conversion mode is all approved nacelle positions where the design operating rotor speed is used for hover operations.

VTOL mode RPM means highest range of RPM that occur for takeoff, approach, hover, and conversion conditions.

5. Add § 36.13 to subpart A to read as follows:

§ 36.13 Acoustical change: Tiltrotor aircraft.

The following requirements apply to tiltrotors in any category for which an acoustical change approval is applied for under § 21.93(b) of this chapter on or after [effective date of final rule]:

(a) In showing compliance with Appendix K of this part, noise levels must be measured, evaluated, and calculated in accordance with the applicable procedures and conditions prescribed in Appendix K of this part.

(b) Compliance with the noise limits prescribed in section 4 of Appendix K of this part must be shown in accordance with the applicable provisions of sections K2 (Noise Evaluation Measure), K3 (Noise Measurement Reference Points), K6 (Noise Certification Reference Procedures), and K7 (Test Procedures) of Appendix K of this part.

(c) After a change in type design, tiltrotor noise levels may not exceed the limits specified in § 36.1103.

6. Add Subpart K of part 36 to read as follows:

Subpart K—Tiltrotors

§ 36.1101 Noise measurement and evaluation.

For tiltrotors, the noise generated must be measured and evaluated under Appendix K of this part, or under an approved equivalent procedure.

§ 36.1103 Noise limits.

(a) Compliance with the maximum noise levels prescribed in Appendix K of this part must be shown for a tiltrotor for which the application for the issuance of a type certificate is made on or after [effective date of the final rule].

(b) To demonstrate compliance with this part, noise levels may not exceed the noise limits listed in section K4 of Appendix K of this part. Appendix K of this part (or an approved equivalent procedure) must also be used to evaluate and demonstrate compliance with the approved test procedures, and at the applicable noise measurement points.

7. Add Appendix K of part 36 to read as follows:

Appendix K to Part 36—Noise Requirements for Tiltrotors Under Subpart K

Sec.

K1 General

K2 Noise Evaluation Measure

K3 Noise Measurement Reference Points

K4 Noise Limits

K5 Trade-offs

K6 Noise Certification Reference Procedures

K7 Test Procedures

Section K1 General

This appendix prescribes noise limits and procedures for measuring noise and adjusting the data to standard conditions for tiltrotors as specified in § 36.1 of this part.

Section K2 Noise Evaluation Measure

The noise evaluation measure is the effective perceived noise level in EPNdB, to be calculated in accordance with section A36.4 of Appendix A of this part, except corrections for spectral irregularities must be determined using the 50 Hertz sound pressure level found in section H36.201 of Appendix H of this part.

Section K3 Noise Measurement Reference Points

The following noise reference points must be used when demonstrating tiltrotor compliance with section K6 (Noise Certification Reference Procedures) and section K7 (Test Procedures) of this appendix:

(a) *Takeoff reference noise measurement points*—

As shown in Figure K1 below:

(1) The centerline noise measurement flight path reference point, designated A, is located on the ground vertically below the reference takeoff flight path. The

measurement point is located 1,640 feet (500 m) in the horizontal direction of flight from the point Cr where transition to climbing flight is initiated, as described in section K6.2 of this appendix;

(2) Two sideline noise measurement points, designated as S(starboard) and S(port), are located on the ground perpendicular to and symmetrically stationed at 492 feet (150 m) on both sides of the

takeoff reference flight path. The measurement points bisect the centerline flight path reference point A.

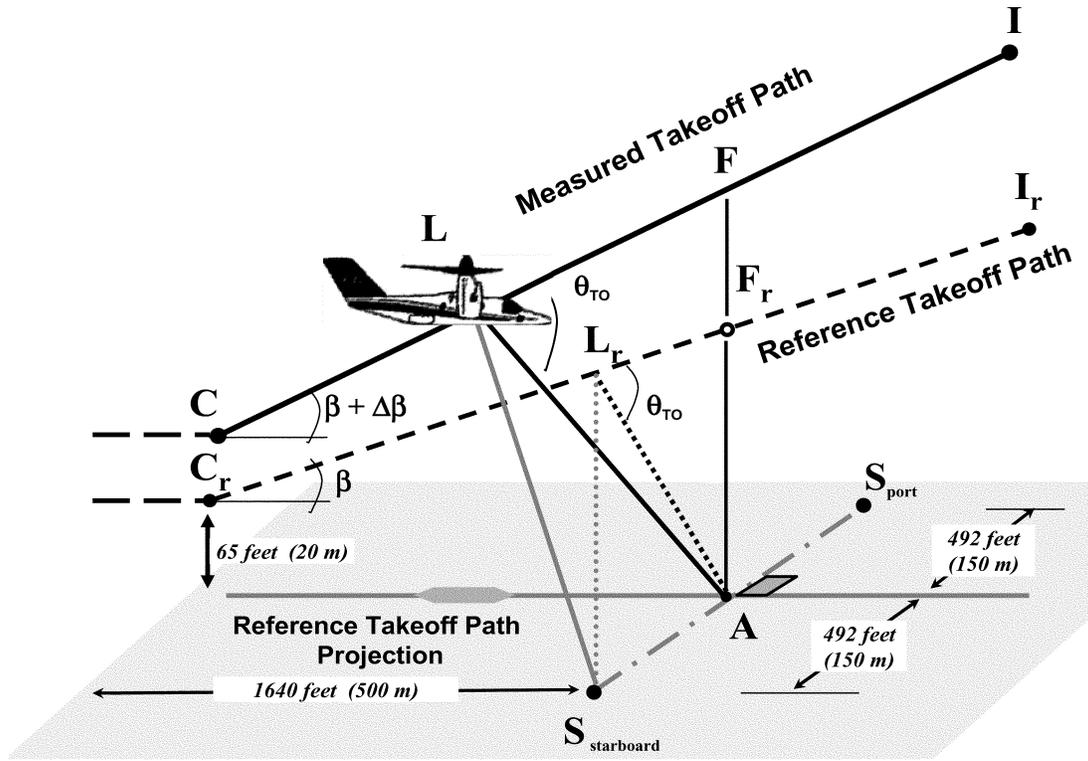


Figure K1.
Comparison of Measured and Reference Takeoff Profiles

(b) *Flyover reference noise measurement points—*

As shown in Figure K2 below:

(1) The centerline noise measurement flight path reference point, designated A, is located on the ground 492 feet (150 m)

vertically below the reference flyover flight path. The measurement point is defined by the flyover reference procedure in section K6.3 of this appendix;

(2) Two sideline noise measurement points, designated as S(starboard) and

S(port), are located on the ground perpendicular to and symmetrically stationed at 492 feet (150 m) on both sides of the flyover reference flight path. The measurement points bisect the centerline flight path reference point A.

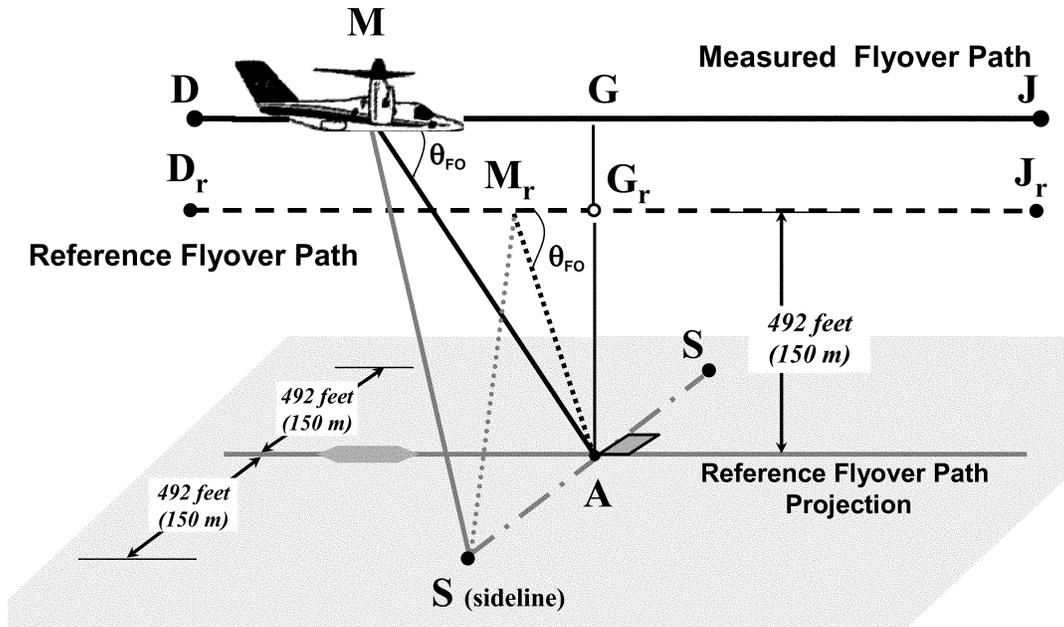


Figure K2.
Comparison of Measured and Reference Flyover Profiles

(c) *Approach reference noise measurement points—*

As shown in Figure K3 below:

(1) The centerline noise measurement flight path reference point, designated A, is located on the ground 394 feet (120 m) vertically below the reference approach flight path. The measurement point is defined by

the approach reference procedure in section K6.4 of this appendix. On level ground, the measurement point corresponds to a position 3,740 feet (1,140 m) from the intersection of the 6.0 degree approach path with the ground plane;

(2) Two sideline noise measurement points, designated as S(starboard) and

S(port), are located on the ground perpendicular to and symmetrically stationed at 492 feet (150 m) on both sides of the approach reference flight path. The measurement points bisect the centerline flight path reference point A.

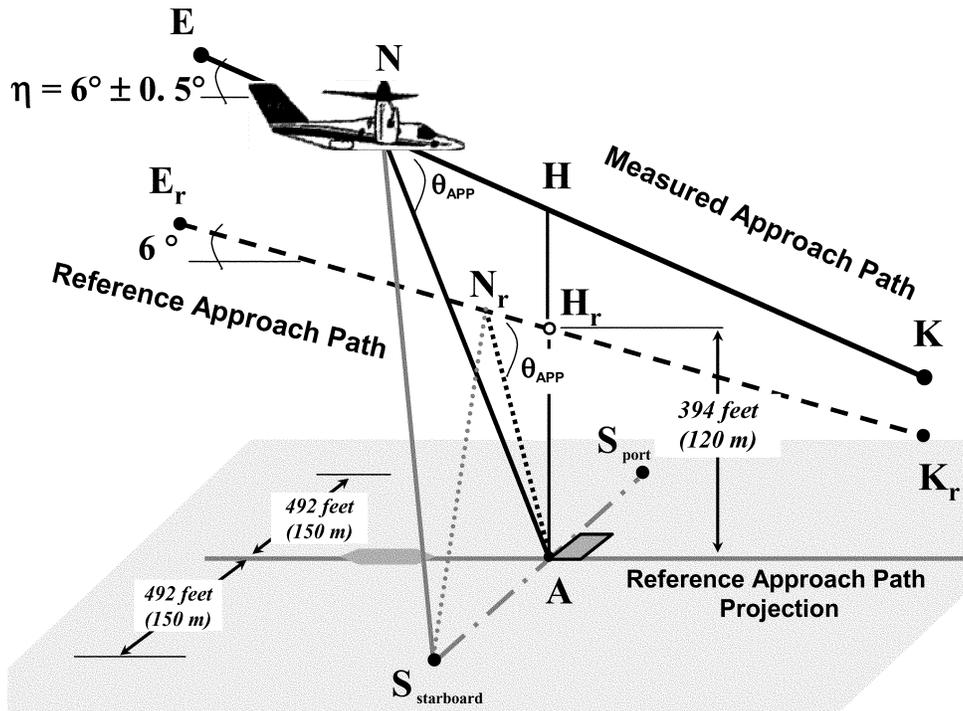


Figure K3.
Comparison of Measured and Reference Approach Profiles

Section K4 Noise Limits

For a tiltrotor, the maximum noise levels, as determined in accordance with the noise evaluation in EPNdB and calculation method described in section H36.201 of Appendix H of this part, must not exceed the noise limits as follows:

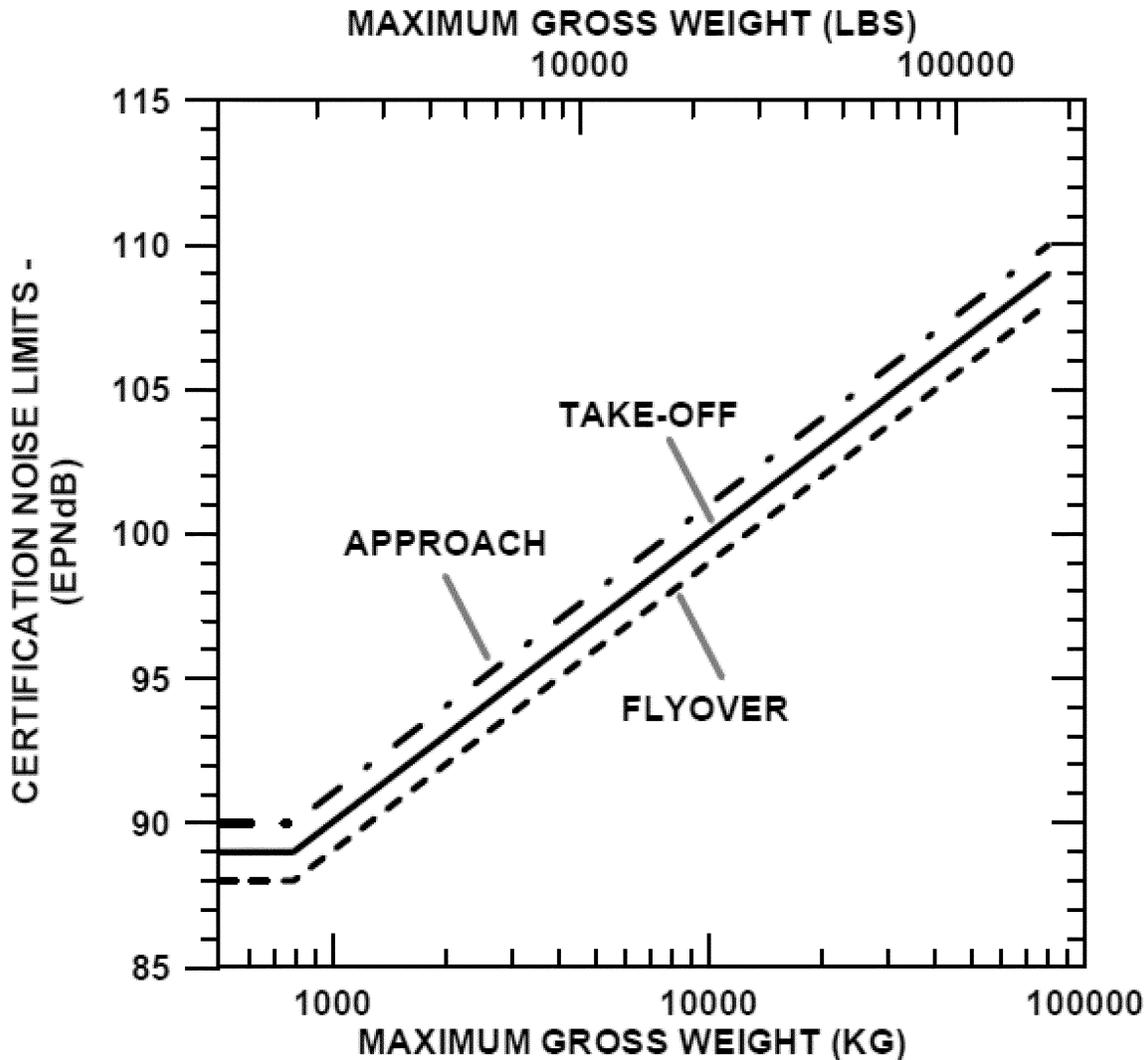
(a) *At the takeoff flight path reference point:* For a tiltrotor having a maximum certificated takeoff weight (mass) of 176,370 pounds (80,000 kg) or more, in VTOL/Conversion mode, 109 EPNdB, decreasing linearly with the logarithm of the tiltrotor

weight (mass) at a rate of 3 EPNdB per halving of weight (mass) down to 89 EPNdB, after which the limit is constant. Figure K4 illustrates the takeoff noise limit as a solid line.

(b) *At the Flyover path reference point:* For a tiltrotor having a maximum certificated takeoff weight (mass) of 176,370 pounds (80,000 kg) or more, in VTOL/Conversion mode, 108 EPNdB, decreasing linearly with the logarithm of the tiltrotor weight (mass) at a rate of 3 EPNdB per halving of weight (mass) down to 88 EPNdB, after which the

limit is constant. Figure K4 illustrates the flyover noise limit as a dashed line.

(c) *At the approach flight path reference point:* For a tiltrotor having a maximum certificated takeoff weight (mass) of 176,370 pounds (80,000 kg) or more, in VTOL/Conversion mode, 110 EPNdB, decreasing linearly with the logarithm of the tiltrotors weight (mass) at a rate of 3 EPNdB per halving of weight (mass) down to 90 EPNdB, after which the limit is constant. Figure K4 illustrates the approach noise limit as a dash-dot line.



**FIGURE K4.
TILTROTOR NOISE LIMITS**

Section K5 Trade-Offs

If the noise evaluation measurement exceeds the noise limits described in K4 of this appendix at one or two measurement points:

(a) The sum of excesses must not be greater than 4 EPNdB;

(b) The excess at any single point must not be greater than 3 EPNdB; and

(c) Any excess must be offset by the remaining noise margin at the other point or points.

Section K6 Noise Certification Reference Procedures

K6.1 General Conditions

- (a) [Reserved]
- (b) [Reserved]

(c) The takeoff, flyover and approach reference procedures must be established in accordance with sections K6.2, K6.3 and K6.4 of this appendix, except as specified in section K6.1(d) of this appendix.

(d) When the design characteristics of the tiltrotor prevent test flights to be conducted in accordance with section K6.2, K6.3 or K6.4 of this appendix, the applicant must revise

the test procedures and resubmit the procedures for approval.

(e) The following reference atmospheric conditions must be used to establish the reference procedures:

(1) Sea level atmospheric pressure of 2,116 pounds per square foot (1,013.25 hPa);

(2) Ambient air temperature of 77° Fahrenheit (25° Celsius, i.e., ISA + 10 °C);

(3) Relative humidity of 70 percent; and

(4) Zero wind.

(f) For tests conducted in accordance with sections K6.2, K6.3, and K6.4 of this appendix, use the maximum normal operating RPM corresponding to the airworthiness limit imposed by the manufacturer. For configurations for which the rotor speed automatically links with the flight condition, use the maximum normal operating rotor speed corresponding for that flight condition. For configurations for which the rotor speed can change by pilot action, use the highest normal rotor speed specified in the flight manual limitation section for power-on conditions.

K6.2 Takeoff Reference Procedure. The takeoff reference flight procedure is as follows:

(a) A constant takeoff configuration must be maintained, including the nacelle angle selected by the applicant;

(b) The tiltrotor power must be stabilized at the maximum takeoff power corresponding to the minimum installed engine(s) specification power available for the reference ambient conditions or gearbox torque limit, whichever is lower. The tiltrotor power must also be stabilized along a path starting from a point located 1,640 feet (500 m) before the flight path reference point, at 65 ft (20 m) above ground level;

(c) The nacelle angle and the corresponding best rate of climb speed, or the lowest approved speed for the climb after takeoff, whichever is the greater, must be maintained throughout the takeoff reference procedure;

(d) The rotor speed must be stabilized at the maximum normal operating RPM certified for takeoff;

(e) The weight (mass) of the tiltrotors must be the maximum takeoff weight (mass) as requested for noise certification; and

(f) The reference takeoff flight profile is a straight line segment inclined from the starting point 1,640 feet (500 m) before to the center noise measurement point and 65 ft (20 m) above ground level at an angle defined by best rate of climb and the speed corresponding to the selected nacelle angle and for minimum specification engine performance.

K6.3 Flyover Reference Procedure. The flyover reference flight procedure is as follows:

(a) The tiltrotor must stabilize for level flight along the centerline flyover flight path and over the noise measurement reference point at an altitude of 492 ft (150 m) above ground level;

(b) A constant flyover configuration must be maintained;

(c) The weight (mass) of the tiltrotor must be the maximum takeoff weight (mass) as requested for noise certification;

(d) In the VTOL/Conversion mode:

(1) The nacelle angle must be at the authorized fixed operation point that is closest to the shallow nacelle angle certificated for zero airspeed;

(2) The airspeed must be 0.9V_{CON}; and

(3) The rotor speed must be stabilized at the maximum normal operating RPM certificated for level flight.

K6.4 Approach Reference Procedure. The approach reference procedure is as follows:

(a) The tiltrotor must be stabilized to follow a 6.0 degree approach path;

(b) An approved airworthiness configuration in which maximum noise occurs must be maintained;

(1) An airspeed equal to the best rate of climb speed corresponding to the nacelle angle, or the lowest approved airspeed for the approach, whichever is greater, must be stabilized and maintained; and

(2) The tiltrotor power during the approach must be stabilized over the flight path reference point, and continue to a landing;

(c) The rotor speed must stabilize at the maximum normal operating RPM certificated for approach;

(d) The constant approach configuration used in airworthiness certification tests, with the landing gear extended, must be maintained; and

(e) The weight (mass) of the tiltrotor at landing must be the maximum landing weight (mass) as requested for noise certification.

Section K7 Test Procedures

K7.1 [Reserved]

K7.2 The test procedures and noise measurements must be conducted and processed to yield the noise evaluation measure designated in section K2 of this appendix.

K7.3 If either the test conditions or test procedures do not conform to the applicable noise certification reference conditions or procedures prescribed by this part, the applicant must apply the correction methods described in section H36.205 of Appendix H of this part to the acoustic test data measured.

K7.4 Adjustments for differences between test and reference flight procedures must not exceed:

(a) For takeoff: 4.0 EPNdB, of which the arithmetic sum of delta 1 and the term $-7.5 \log(QK/QrKr)$ from delta 2 must not in total exceed 2.0 EPNdB;

(b) For flyover or approach: 2.0 EPNdB.

K7.5 The average rotor RPM must not vary from the normal maximum operating RPM by more than +/-1.0 percent during the 10 dB-down time interval.

K7.6 The tiltrotor airspeed must not vary from the reference airspeed appropriate to the flight demonstration by more than +/- 9 km/h (5 kts) throughout the 10 dB-down time interval.

K7.7 The number of level flyovers made with a head wind component must be equal to the number of level flyovers made with a tail wind component.

K7.8 The tiltrotor must operate between +/- 10 degrees from the vertical or between +/- 65 feet (+/- 20 m) lateral deviation tolerance, whichever is greater, above the reference track and throughout the 10 dB-down time interval.

K7.9 The tiltrotor altitude must not vary during each flight by more than +/- 30 ft (+/- 9 m) from the reference altitude at the overhead point.

K7.10 During the approach procedure, the tiltrotor must establish a stabilized constant speed approach and fly between approach angles of 5.5 degrees and 6.5 degrees.

K7.11 During all test procedures, the tiltrotor weight (mass) must not be less than 90 percent and not more than 105 percent of the maximum certificated weight (mass). For each of the test procedures, complete at least one test at or above this maximum certificated weight (mass).

K7.12 A tiltrotor capable of carrying external loads or external equipment must be noise certificated without such loads or equipment fitted.

K7.13 The values of V_{CON} and V_{MCP} or V_{MO} used for noise certification must be included in the approved Flight Manual.

Issued in Washington, DC, on June 10, 2011.

Lourdes Maurice,

Director, Office of Environment and Energy.

[FR Doc. 2011-15276 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2011-0568; Directorate Identifier 2011-NM-010-AD]

RIN 2120-AA64

Airworthiness Directives; Fokker Services B.V. Model F.27 Mark 050, 200, 300, 400, 500, 600, and 700 Airplanes; and Model F.28 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:

[T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F27 and F28 type designs in response to these regulations revealed that, under certain failure conditions, a short circuit can develop in the fuel pilot valve solenoid or in the wiring to the solenoid. Such a short circuit may result in an ignition source in the wing tank vapour space.

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

* * * * *

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 August 5, 2011.

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

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Fax: 202-493-2251.

- Mail: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- Hand Delivery: U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2011-0568; Directorate Identifier 2011-NM-010-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 European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010-0195, dated September 29, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

[T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) has published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F27 and F28 type designs in response to these regulations revealed that, under certain failure conditions, a short circuit can develop in the fuel pilot valve solenoid or in the wiring to the solenoid. Such a short circuit may result in an ignition source in the wing tank vapour space.

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

For the reasons described above, this AD requires [re-working the wiring and] the installation of a fuse packed in a jiffy junction [i.e., crimped wire in-line junction device] in the wiring to the fuel pilot valve solenoid.

The required actions also include revising the maintenance program to include a certain Critical Design Configuration Control Limitation (CDCCL). You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank

systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21-78, and subsequent Amendments 21-82 and 21-83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination

with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Fokker Services B.V. has issued the Fokker service bulletins listed in the following table.

TABLE—*Service Bulletins*

Fokker Service Bulletin—	Dated—
SBF50–28–024, including Drawing W7916–057, Sheets 006 and 007, Issue E, dated June 23, 2010, Drawing W7987–520, Sheets 1 and 2, dated October 24, 2005, and Manual Change Notification—Maintenance Document MCNM–F50–070, dated June 23, 2010.	June 23, 2010.
SBF28–28–051, including Drawing W57231, Sheets 010 and 011, Issue K, dated June 23, 2010, Drawing W58048, Sheet 2, dated April 29, 2010, and Manual Change Notification—Maintenance Document MCNM–F28–034, dated June 23, 2010.	June 23, 2010.
SBF27–28–069, including Drawing W7202–138, Sheets 001 and 002, Issue B, dated June 23, 2010, and Manual Change Notification—Maintenance Document MCNM–F27–025, dated June 23, 2010.	June 23, 2010.
SBF100–28–042, including Drawing W41192, Sheet 012, Issue AG, dated June 23, 2010, Drawing W59520, Sheet 1, Issue A, dated April 29, 2010, and Manual Change Notification—Maintenance Document MCNM–F100–129, dated June 23, 2010.	June 23, 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 6 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of

this proposed AD. The average labor rate is \$85 per work-hour. Required parts would cost up to \$2,198 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be up to \$16,248, or up to \$2,708 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker Services B.V.: Docket No. FAA–2011–0568; Directorate Identifier 2011–NM–010–AD.

Comments Due Date

- (a) We must receive comments by August 5, 2011.

Affected ADs

- (b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.27 Mark 050, 200, 300, 400, 500, 600, and 700 airplanes; Fokker Services B.V. Model F.28 Mark 0070, 0100, 1000, 2000, 3000, and 4000 airplanes; certificated in any category; all serial numbers.

Note 1: This AD requires revisions to certain operator maintenance documents to include a new Critical Design Configuration Control Limitation (CDCCL). Compliance with this CDCCL is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (j)(1) of this AD. The request should include a description of

changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

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

Reason

(e) The mandatory continuing airworthiness information (MCAI) states: [T]he Federal Aviation Administration (FAA) has published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) have published Interim Policy INT/POL/25/12. The review conducted by Fokker Services on the Fokker F27 and F28 type designs in response to these regulations revealed that, under certain failure conditions, a short circuit can develop in the fuel pilot valve solenoid or in the wiring to the solenoid. Such a short circuit

may result in an ignition source in the wing tank vapour space.

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

* * * * *

Compliance

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

Installation of Fuses Packed in Jiffy Junctions

(g) Within 24 months after the effective date of this AD, re-work the wiring and install the fuses packed in jiffy junctions (i.e., crimped wire in-line junction device), in accordance with the Accomplishment Instructions of the applicable Fokker service bulletin identified in table 1 of this AD.

TABLE 1—Service Bulletins

Fokker Service Bulletin—	Dated—
SBF50–28–024, including Drawing W7916–057, Sheets 006 and 007, Issue E, dated June 23, 2010, Drawing W7987–520, Sheets 1 and 2, dated October 24, 2005, and Manual Change Notification—Maintenance Document MCNM–F50–070, dated June 23, 2010.	June 23, 2010.
SBF28–28–051, including Drawing W57231, Sheets 010 and 011, Issue K, dated June 23, 2010, Drawing W58048, Sheet 2, dated April 29, 2010, and Manual Change Notification—Maintenance Document MCNM–F28–034, dated June 23, 2010.	June 23, 2010.
SBF27–28–069, including Drawing W7202–138, Sheets 001 and 002, Issue B, dated June 23, 2010, and Manual Change Notification—Maintenance Document MCNM–F27–025, dated June 23, 2010.	June 23, 2010.
SBF100–28–042, including Drawing W41192, Sheet 012, Issue AG, dated June 23, 2010, Drawing W59520, Sheet 1, Issue A, dated April 29, 2010, and Manual Change Notification—Maintenance Document MCNM–F100–129, dated June 23, 2010.	June 23, 2010.

Critical Design Configuration Control Limitation (CDCCL)

(h) Before further flight after doing the actions required by paragraph (g) of this AD: Revise the aircraft maintenance program by incorporating the CDCCL specified in paragraph 1.L.(1)(c) of the applicable Fokker service bulletins identified in table 1 of this AD.

No Alternative Actions, Intervals, and/or CDCCLs

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

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: Although European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0195, dated September 29, 2010, specifies revising the maintenance program to include maintaining CDCCLs, this AD only requires the revision. Requiring a revision of the maintenance program, rather than requiring maintaining CDCCLs, requires operators to record AD compliance only at the time the revision is made. Maintaining CDCCLs specified in the airworthiness limitations must be complied with in accordance with 14 CFR 91.403(c).

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance: The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be e-mailed to: 9-ANM-116-AMOC-REQUESTS@faa.gov. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(k) Refer to MCAI EASA Airworthiness Directive 2010–0195, dated September 29, 2010, and the Fokker service bulletins identified in table 1 of this AD, for related information.

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

Ali Bahrami,
Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 2011–15360 Filed 6–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0527; Airspace Docket No. 11–AWA–2]

RIN 2120–AA66

Proposed Amendment of Class C Airspace; Palm Beach International Airport, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Palm Beach International Airport Class C airspace area by raising the floor of Class C airspace above Palm Beach County Park Airport (LNA) from 1,200 feet MSL to 1,600 feet MSL. The FAA is proposing this action to enhance safety and enable more efficient operations at LNA.

DATES: Comments must be received on or before August 22, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001; *telephone:* (202) 366-9826. You must identify FAA Docket No. FAA-2011-0527 and Airspace Docket No. 11-AWA-2, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA-2011-0527 and Airspace Docket No. 11-AWA-2) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Nos. FAA-2011-0527 and Airspace Docket No. 11-AWA-2." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at http://www.faa.gov/regulations_policies/rulemaking/recently_published/

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

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

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to modify the Palm Beach International Airport Class C airspace area by raising the floor of Class C airspace to 1,600 feet MSL within an area overlying, and to the south of, the Palm Beach County Park Airport (see attached chart). Currently, the floor of Class C airspace in the vicinity of LNA is at 1,200 feet MSL. Raising the Class C floor as proposed would enhance safety by providing additional clearance between rotorcraft and fixed-wing aircraft entering the traffic pattern at LNA. This would allow fixed-wing aircraft entering the traffic pattern to safely overfly the existing helicopter patterns and also would allow LNA helicopter training activities to take place at higher altitudes. The boundaries would be depicted as subareas A, B, and C for clarity.

In addition, a minor correction is made to the geographic coordinates of

LNA to reflect the current information in the FAA's aeronautical database.

Class C airspace areas are published in paragraph 4,000 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 C airspace area modification proposed in this document would be published subsequently in the Order.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies terminal airspace as required to preserve the safe and efficient flow of air traffic.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ASO FL C Palm Beach International Airport, FL [Amended]

Palm Beach International Airport, FL
(Lat. 26°40'59" N., long. 80°05'44" W.)
Palm Beach County Park Airport
(Lat. 26°35'35" N., long. 80°05'06" W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of Palm Beach International Airport, excluding that airspace within a 2-mile radius of the Palm Beach County Park Airport.

Area B. That airspace extending upward from 1,600 feet MSL to and including 4,000 feet MSL within an area bounded on the north by a line direct from the intersection of the Florida Turnpike (Highway 91) and Lantana Road to the intersection of a 5-mile radius of the Palm Beach International Airport and a 2-mile radius west of the Palm Beach County Park Airport and a 2-mile radius north of the Palm Beach County Park

Airport, on the east by a line direct from the intersection of a 5-mile radius of the Palm Beach International Airport and a 2-mile radius east of the Palm Beach County Park Airport to the intersection of a 10-mile radius of the Palm Beach International Airport and US 1, on the south by a 10-mile radius of the Palm Beach International Airport, and on the west by the Florida Turnpike.

Area C. That airspace extending upward from 1,200 feet MSL to and including 4,000 feet MSL within a 10-mile radius of the Palm Beach International Airport, excluding area B.

Issued in Washington, DC, on June 13, 2011.

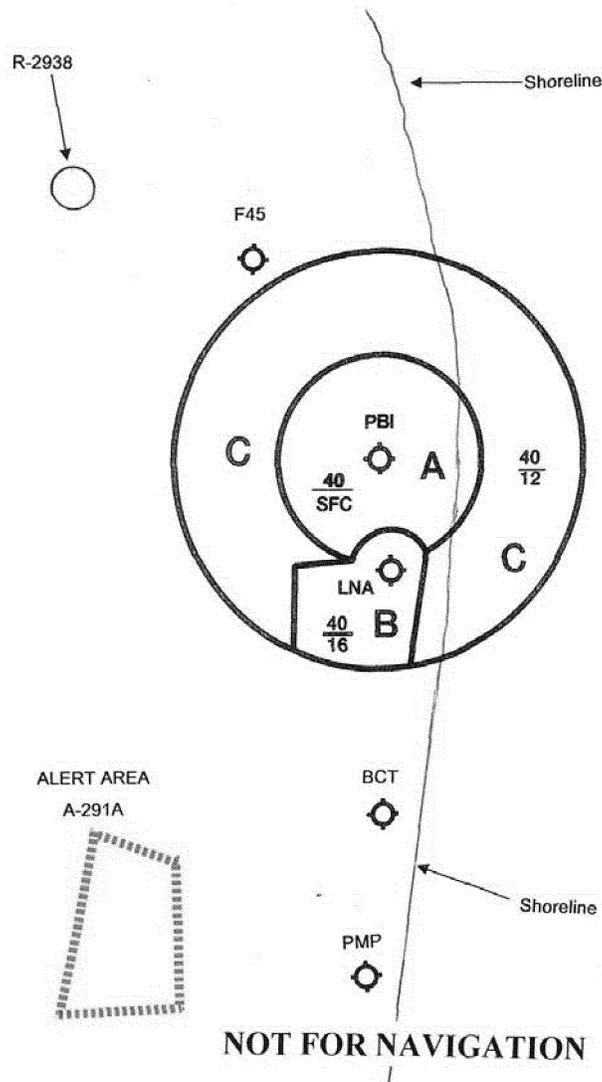
Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

BILLING CODE 4910–13–P

**Proposed Modification of the
Palm Beach International Airport
Class C Airspace Area**

Airspace Docket No. 11-AWA-2



[FR Doc. 2011-15407 Filed 6-20-11; 8:45 am]
BILLING CODE 4910-13-C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2011-0439; Airspace
Docket No. 11-ANM-10]

**Proposed Amendment of Class D and
Class E Airspace and Establishment of
Class E Airspace; Casper, WY**

AGENCY: Federal Aviation
Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking
(NPRM).

SUMMARY: This action proposes to amend Class D and Class E airspace at Casper, Natrona County International Airport, Casper, WY, by adjusting the geographic coordinates of the airport. This action also would establish Class E En Route Domestic airspace at the airport, to facilitate vectoring of Instrument Flight Rules (IFR) traffic from en route airspace to Casper, WY. The FAA is proposing this action to enhance the safety and management of aircraft operations at Casper, Natrona County International Airport.

DATES: Comments must be received on or before August 5, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366-9826. You must identify FAA Docket No. FAA-2011-0439; Airspace Docket No. 11-ANM-10, at the beginning of your comments. You may also submit comments through the Internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:
Eldon Taylor, Federal Aviation
Administration, Operations Support

Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203-4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2011-0439 and Airspace Docket No. 11-ANM-10) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA-2011-0439 and Airspace Docket No. 11-ANM-10". The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at <http://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at http://www.faa.gov/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 the **ADDRESSES** section for the 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 Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class D and Class E airspace areas by adjusting the geographic coordinates of Casper, Natrona County International Airport to be in concert with the FAA's aeronautical database. Also, this action would establish Class E en route domestic airspace extending upward from 1,200 feet above the surface at the airport that would enhance the safety and management of IFR operations by vectoring IFR aircraft from en route airspace to the airport.

Class E airspace designations are published in paragraphs 5000, 6002, 6004, 6005 and 6006, respectively, of FAA Order 7400.9U, dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1,

Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it creates additional controlled airspace at Casper, Natrona County International Airport, Casper, WY.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, 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 part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ANM WY D Casper, WY [Amended]

Casper, Natrona County International Airport, WY
(Lat. 42°54'29" N., long. 106°27'52" W.)

That airspace extending upward from the surface to and including 7,800 feet MSL within a 4.3-mile radius of Natrona County International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM WY E2 Casper, WY [Amended]

Casper, Natrona County International Airport, WY

(Lat. 42°54'29" N., long. 106°27'52" W.)

Within a 4.3-mile radius of Natrona County International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E airspace designated as an extension to a Class D surface area.

* * * * *

ANM WY E4 Casper, WY [Amended]

Casper, Natrona County International Airport, WY

(Lat. 42°54'29" N., long. 106°27'52" W.)

Muddy Mountain VORTAC

(Lat. 43°05'27" N., long. 106°16'37" W.)

Johno LOM

(Lat. 42°54'26" N., long. 106°34'12" W.)

That airspace extending upward from the surface within 4.3 miles each side of the Muddy Mountain VORTAC 216° radial extending from the VORTAC to 29 miles southwest of the VORTAC, and within 2.7 miles each side of the ILS localizer west course extending from .9 miles east to 9 miles west of the Johno LOM. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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

* * * * *

ANM WY E5 Casper, WY [Amended]

Casper, Natrona County International Airport, WY

(Lat. 42°54'29" N., long. 106°27'52" W.)

Muddy Mountain VORTAC

(Lat. 43°05'27" N., long. 106°16'37" W.)

Casper ASR

(Lat. 42°55'16" N., long. 106°27'15" W.)

That airspace extending upward from 700 feet above the surface within a 23.5-mile radius of the Casper ASR; that airspace extending upward from 1,200 feet above the surface within the 37.5-mile radius of the Casper ASR, and within an area extending from the 37.5-mile radius to the 36.6-mile radius of the Muddy Mountain VORTAC, bounded on the north by the Muddy Mountain VORTAC 060° radial and on the south by the Muddy Mountain VORTAC 111° radial; that airspace extending upward from 11,500 feet MSL extending from the 37.5-mile radius to the 52.2-mile radius of the Muddy Mountain VORTAC, bounded on the east by the west edge of V-19 and on the south by the north edge of V-298.

Paragraph 6006 En route domestic airspace areas.

* * * * *

ANM WY E6 Casper, WY [New]

Casper, Natrona County International Airport, WY

(Lat. 42°54'29" N., long. 106°27'52" W.)

That airspace extending upward from 1,200 feet above the surface within a 85-mile

radius of Natrona County International Airport; excluding existing controlled airspace 7,100 feet MSL and above.

Issued in Seattle, Washington, on June 14, 2011.

William Buck,

Acting Manager, Operations Support Group, Western Service enter.

[FR Doc. 2011-15393 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600, 610, and 680

[Docket No. FDA-2011-N-0080]

Amendments to Sterility Test Requirements for Biological Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) proposes to amend the sterility test requirements for biological products. This proposed rule is intended to provide manufacturers of biological products greater flexibility and to encourage use of the most appropriate and state-of-the-art test methods for assuring the safety of biological products. We are taking this action as part of our continuing effort to review and, as necessary, update the biologics regulations.

DATES: Submit either electronic or written comments on this proposed rule by September 19, 2011. See section X of this document for the proposed effective date of any final rule that may publish based on this proposal.

ADDRESSES: You may submit comments, identified by Docket No. FDA-2011-N-0080, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

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

Instructions: All submissions received must include the Agency name and

Docket No. FDA-2011-0080 for this rulemaking. All comments received may be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Paul E. Levine, Jr., Center for Biologics Evaluation and Research (HFM-17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852-1448, 301-827-6210.

SUPPLEMENTARY INFORMATION:

I. Background

Any product that purports to be sterile should be free of viable contaminating microorganisms to assure product safety (§ 600.3(q) (21 CFR 600.3(q)). Absolute sterility of a lot cannot be practically demonstrated without complete destruction of every finished article in that lot (United States Pharmacopeia (USP) Chapter 1211). Therefore, sterility assurance is accomplished primarily by validation of the sterilization process or of the aseptic processing procedures under current good manufacturing practice (CGMP), and is supported by sterility testing using validated and verified test methods. (See *e.g.*, USP Chapter 71>, European Pharmacopeia 2.6.2.)

In the **Federal Register** of November 20, 1973 (38 FR 32048), we reorganized and republished the biologics regulations, which included regulations governing sterility testing, as title 21 of the Code of Federal Regulations (CFR), subchapter F, parts 600 through 680 (21 CFR parts 600 through 680). Section 610.12 currently requires manufacturers to perform sterility tests for both bulk and final container material of most biological products¹ for the detection of

¹ Sterility tests are not currently required to be performed for Whole Blood, Cryoprecipitated Antihemophilic Factor (AHF), Platelets, Red Blood Cells, Plasma, Source Plasma, Smallpox Vaccine, Reagent Red Blood Cells, Anti-Human Globulin, or Blood Grouping Reagents; or in cases where the Director of the Center for Biologics Evaluation and Research (CBER) or the Center for Drug Evaluation and Research (CDER), as appropriate, determines that the mode of administration, method of

viable contaminating microorganisms (e.g., bacteria, molds, and/or yeasts).

Over the years, FDA has amended the biologics regulations, as necessary, to clarify and update the sterility test requirements. On March 11, 1976 (41 FR 10427) and March 2, 1979 (44 FR 11754), we updated § 610.12 to clarify the procedures for repeat testing. On April 18, 1984 (49 FR 15186), we amended § 610.12 by removing and reserving paragraph (g)(3) previously entitled *Different Tests Equal or Superior* and by adding § 610.9 entitled *Equivalent methods and processes* to provide manufacturers of licensed biological products the flexibility to use alternate test methods or manufacturing processes that provide assurances of safety, purity, potency, and effectiveness equal or greater than those provided by the methods or processes specified in the regulations under parts 610 through 680. On December 15, 1986 (51 FR 44903), we clarified and updated certain requirements for sterility testing to ensure the reliability of the growth-promoting qualities of the sterility test culture media and to provide greater consistency with the requirements of USP Chapter XXI. Finally, on September 15, 1997 (62 FR 48174), we incorporated by reference the 1995 ed. of the USP concerning the procedures for the membrane filtration test method.

Section 610.12 currently requires that the sterility of most licensed biological products² be demonstrated through the performance of tests prescribed in § 610.12(a) and (b). Specifically, § 610.12 requires that the sterility of each lot of each product, with the exception of certain products,³ be demonstrated by the performance of prescribed sterility tests for both bulk and final container material, unless different sterility tests are prescribed in the license (see § 610.12(g)(1)) or the manufacturer submits adequate data⁴ establishing that the mode of administration, the method of preparation, or the special nature of the product precludes or does not require a sterility test, or that the sterility of the lot is not necessary to assure the safety,

preparation, or special nature of the product precludes or does not require a sterility test or that the sterility of the lot is not necessary to assure the safety, purity, and potency of the product. (See 21 CFR 610.12(g)(4).)

² See list of exemptions in § 610.12(g)(4).

³ Whole Blood, Cryoprecipitated AHF, Platelets, Red Blood Cells, Plasma, Source Plasma, Smallpox Vaccine, Reagent Red Blood Cells, Anti-Human Globulin, or Blood Grouping Reagents (§ 610.12(g)(4)(i)).

⁴ The Director of CBER or CDER, as appropriate, will determine the adequacy of the data (§ 610.12(g)(4)(ii)).

purity, and potency of the product (§ 610.12(g)(4)(ii)).

The regulation, under § 610.12, also specifies the test method and culture media to be used. For instance, the prescribed sterility test methods rely upon culture media (either Fluid Thioglycollate Medium or Soybean-Casein Digest Medium) to detect growth of microorganisms (§ 610.12(a)(1) and (a)(2)). Moreover, § 610.12 specifies criteria, such as incubation conditions (time and temperature) to be used during testing, suitable test organisms for the evaluation of the growth-promoting qualities of the culture media, storage and maintenance of test organism cultures, and storage and condition of media.

Manufacturers of innovative products, such as cell and gene therapy products, as well as manufacturers of currently approved products, may benefit from sterility test methods with rapid and advanced detection capabilities. Advances in technology in recent years have allowed the development of new sterility test methods that yield accurate and reliable test results in less time and with less operator intervention than the currently prescribed methods. Some examples of novel methods with the potential to detect viable contaminating microorganisms include the Adenosine Triphosphate (ATP) bioluminescence, chemiluminescence, and carbon dioxide head space measurement.

We are proposing to amend § 610.12 to promote improvement and innovation in the development of sterility test methods, to address the challenges of novel products that may be introduced to the market in the future, and to potentially enhance sterility testing of currently approved products. This proposed revision would provide manufacturers the flexibility to take advantage of modern methods as they become available, provided that these methods meet certain criteria.

II. Highlights of This Proposed Rule

We are proposing to amend the sterility test requirements for biological products to provide manufacturers with greater flexibility to encourage use of the most appropriate and state-of-the-art test methods. The most significant proposed changes include the following:

- Elimination of specified sterility test methods, culture media formulae (or formulations), and culture media test requirements;
- Elimination of specified membrane filtration procedure requirement for certain products;

- Elimination of specified sterility test requirements for most bulk material;⁵

- Modification of the repeat sterility test requirements, so that repeat tests would occur only once for each lot. These tests would be limited to situations when the quality control unit conclusively determines, after conducting an investigation upon detection of viable microbial contamination during the initial test of the lot, that the contamination is the result of laboratory error or faulty materials used in conducting the sterility test;

- Replacement of the storage and maintenance requirements for cultures of test organisms used to determine the “growth-promoting qualities” of culture media with: (1) Validation requirements specifying that any sterility test used is able to consistently detect the presence of viable contaminating microorganisms and (2) verification of “growth-promoting properties”⁶ or microorganism-detection capabilities of test and test components;

- Replacement of the sample size or amount requirement with a requirement that the sample be appropriate to the material being tested;

- Replacement of the *Interpretation of test results* paragraph under § 610.12(c) with a requirement that manufacturers establish, implement, and follow written procedures for sterility testing that describe, at a minimum, the test method used, the method of sampling, and the written specifications for acceptance or rejection of each lot; and

- Simplification of the *Exceptions* paragraph under § 610.12(c).

III. Description of This Proposed Rule

This proposed rule is intended to promote improvement and innovation in the development of sterility test methods by allowing manufacturers flexibility needed for sterility testing of some novel products that may be introduced to the market, to enhance sterility testing of currently approved products, and to encourage manufacturers to benefit from scientific and technological advances in sterility test methods as they become available.

A. When is sterility testing required?

Currently, sterility testing must be performed, with certain limited

⁵ See section III.A of this document for a detailed discussion of when sterility testing of bulk material may be necessary and appropriate.

⁶ We are proposing to refer to “growth-promoting properties” rather than “growth-promoting qualities” as we believe “growth-promoting properties” may reflect more accurate and current terminology. However, we invite comments on which term is most appropriate.

exceptions, on both bulk and final container material for each lot of each biological product prior to release of that lot (§§ 610.1 and 610.12). A lot is defined as that quantity of uniform material identified by the manufacturer as having been thoroughly mixed in a single vessel (§ 600.3(x)).

We propose to eliminate the sterility test requirement for most bulk materials. We have determined that, in most cases, for purposes of sterility testing, the most appropriate test material is the final container material. We recognize that, due to the nature of some biological products, testing the final container material may not always be feasible or appropriate. Thus, proposed § 610.12 would require that prior to release, manufacturers of biological products must perform sterility testing of each lot of each biological product's final container material or other material (e.g., bulk material or active pharmaceutical ingredient (API), in-process material, stock concentrate material) as appropriate and as approved in the biologics license application (BLA) or BLA supplement. For example, certain allergenic and cell and gene therapy products may need to be tested for sterility at an in-process stage or some other stage of the manufacturing process (e.g., intermediate, API, bulk drug substance) instead of the final container material, because the final container material may interfere with the sterility test. Likewise, some cell therapy products and cell-based gene therapy products may need to be tested for sterility at an in-process stage or some other stage of manufacturing process because low production volumes may result in an insufficient final container material sample for sterility testing or a short product shelf-life may necessitate administration of the final product to a patient before sterility test results on the final container material are available. If it is determined that sterility testing needs to be performed on material other than the final product, due to the nature of the final product, we would expect the manufacturer, in its BLA or BLA supplement, to: (1) Describe the details of the sterility test method, including the procedure for testing the alternate material instead of the final container material and (2) provide the scientific rationale for selecting the specific test material.

If this proposed rule is finalized, a manufacturer who desires to utilize an alternate sterility test method other than the one approved in its BLA must submit a BLA supplement in accordance with § 601.12(b).

B. What are the sterility test requirements?

1. Test Methods

Currently, § 610.12(a), (b), and (e) prescribe the culture-based test method to be used for sterility testing, including the acceptable culture media (either Fluid Thioglycollate Medium or Soybean-Casein Digest Medium) and incubation conditions (time and temperature) to be used during testing, with exceptions provided in § 610.12(g). In addition, § 610.12(f) provides that a membrane filtration test method, set forth in (USP 23d revision, 1995), may be used to test bulk and final container materials or products containing oil products in water-insoluble ointments. We propose to eliminate references to specific test methods and culture media for sterility testing, and instead require that the sterility test be appropriate to the material being tested such that the material does not interfere with or otherwise hinder the test. We believe that this revision recognizes current practices and provides manufacturers the flexibility to take advantage of suitable modern sterility test methods and keep pace with advances in science and technology. Because we are proposing to expand potentially acceptable sterility test methods to include non-culture-based methods in addition to culture-based methods, we also propose to remove the definition of a lot of culture medium currently defined in § 610.12(e)(2)(i) as “* * * that quantity of uniform material identified as having been thoroughly mixed in a single vessel, dispensed into a group of vessels of the same composition and design, sterilized in a single autoclave run, and identified in a manner to distinguish one lot from another. * * *” Although we still consider this definition to apply, we believe that this concept is captured by the definition of “lot” in § 600.3(x). This change also reflects our recognition that prepared culture media may be purchased, in which case a lot may be predetermined by the vendor.

Section 610.12(e)(2)(i) currently provides an exception to the growth-promoting test requirements for dehydrated culture media provided that the manufacturer has an approved validation program for autoclaves used to sterilize these media and the manufacturer has received approval for this practice from the Director of CBER or CDER, as appropriate. We propose to eliminate this exception. Proposed § 610.12(h)(2) provides that all manufacturers seeking an exemption from the sterility test requirements must submit, in their BLA or BLA

supplement, data that adequately establish that the route of administration, the method of preparation, or any other aspect of the product precludes or does not necessitate a sterility test.

Additionally, current § 610.12(e)(2)(ii) stipulates the test organisms, strains, characteristics, identity, and verification to be used. We propose to eliminate the requirement to test culture media with specific test organisms and to eliminate the requirement regarding the number of organisms that must be used to demonstrate the growth-promoting qualities of the culture media. This flexibility would allow manufacturers to use sterility test methods that are either culture-based or non-culture-based, which may necessitate different verification activities. Thus, instead of specifying the number and type of test organisms, proposed § 610.12(b) would require the following: (1) Use of a sterility test method that is appropriate to the material being tested such that the material does not interfere with or otherwise hinder the test; (2) validation studies to demonstrate that the sterility test method used is capable of consistently detecting the presence of viable contaminating microorganisms; and (3) verification that the sterility test method and test components used can detect the presence of viable contaminating microorganisms.

Due to the variety of currently available and potential future sterility test methods, we propose to eliminate specified incubation conditions (time and temperature) and visual examination requirements currently prescribed in § 610.12. Because we propose to allow any validated sterility test method that is appropriate to the material being tested, rather than specifying the test and the media used, we also propose to eliminate the Fluid Thioglycollate Medium incubation temperatures prescribed in § 610.12(a)(1)(ii) for the final container material containing a mercurial preservative.

2. Validation

The International Conference on Harmonisation (ICH) Q2(R1) “Validation of Analytical Procedures: Text and Methodology” dated November 2005, states that “[t]he objective of validation of an analytical procedure is to demonstrate that it is suitable for its intended purpose.”⁷

⁷ This text was previously named “Text on Validation of Analytical Procedures” (Q2A) (approved by the Steering Committee in October 1994). An accompanying “Guideline on Validation of Analytical Procedures: Methodology” (Q2B) was

Similarly, USP General Chapter 1223, "Validation of Alternative Microbiological Methods," states: "Validation of a microbiological method is the process by which it is experimentally established that the performance characteristics of the method meet the requirements for the intended application." For sterility testing, this means that the test can consistently detect the presence of viable contaminating microorganisms.

We propose to eliminate the prescribed sterility test methods found in current § 610.12 and instead allow the use of sterility test methods that are validated in accordance with established protocols, to be capable of consistently detecting the presence of viable contaminating microorganisms. If an established USP compendial sterility test method is used, a manufacturer must verify that this established method is suitable for application to the specific product; however, FDA considers established USP compendial sterility test methods to already have been validated using an established validation protocol, so their accuracy, specificity, and reproducibility need not be re-established to fulfill the proposed validation requirement. In contrast, novel methods and any methods that deviate from the USP compendial sterility test methods would require the detailed validation discussed in the following paragraphs.

Proposed § 610.12 allows the use of a material sample that does not interfere with or otherwise hinder the sterility test from detecting viable contaminating microorganisms. This requirement is crucial, because the material itself or substances added to the material during formulation may make some sterility tests inappropriate for use. A validated sterility test method is a critical element in assuring the safety and quality of the product. USP General Chapter 1223, as well as the ICH Guideline for Industry (Text on Analytical Procedures), provide general descriptions of typical validation parameters, how they are determined, and which subset of each parameter is required to demonstrate validity, based on the method's intended use. Validation of each test method should be performed on a case-by-case basis, to ensure that the parameters are appropriate for the method's intended use. In the context of

reviewing sterility test methods as part of BLAs and BLA supplements, FDA may decide, as appropriate, to encourage the use of the compendial method as a benchmark or starting point for validation of novel methods and certain other methods. FDA is specifically seeking comments on whether the proposed requirements are sufficient to ensure adequate validation of novel sterility test methods or whether additional criteria or guidance is needed.

It is important to consider validation principles, such as limit of detection, specificity, ruggedness, and robustness, while developing the validation protocol and performing validation studies. These terms are defined as follows:

- The limit of detection reflects the lowest number of microorganisms that can be detected by the method in a sample matrix. This is necessary to define what is considered contaminated.
- Specificity is the ability of the test method to detect a range of organisms necessary for the method to be suitable for its intended use. This is demonstrated by challenging the sterility test with a panel of relevant organisms in the sample matrix.
- Ruggedness is the degree of reproducibility of results obtained by analysis of the same sample under a variety of normal test conditions, such as different analysts, different instruments, and different reagent lots.
- Robustness is the capacity of the test method to remain unaffected by small, but deliberate variations in method parameters, such as changes in reagent concentration or incubation temperatures.

Under 21 CFR 211.160(b), laboratory controls must include the establishment of scientifically sound and appropriate specifications, standards, sampling plans, and test procedures designed to assure that components, drug product containers, closures, in-process materials, labeling, and drug products conform to appropriate standards of identity, strength, quality, and purity. We consider such laboratory controls to be needed for both culture-based and non-culture-based sterility test methods. The manufacturer must establish and document the test method's accuracy, sensitivity, specificity, and reproducibility (§ 211.165(e) (21 CFR 211.165(e))), as specified in the BLA or BLA supplement (§§ 601.2 and 601.12). For sterility tests, FDA believes that a validation protocol that would meet these standards would, at a minimum, include samples of the material to be marketed, and incorporate appropriate viable contaminating microorganisms to

demonstrate the sterility test's growth-promoting properties or the method's detection system capabilities, depending on the type of test method used. In addition, validation protocols for culture-based methods should include both aerobic and anaerobic microorganisms when selecting test organisms and include microorganisms that grow at differing rates so that manufacturers can establish that the test media are capable of supporting the growth of a wide range of microorganisms.

When utilizing culture-based methods, validation protocols should require that challenge organisms be added directly to the product prior to membrane filtration or direct inoculation. If this is not possible due to inhibition by the product, then validation protocols should require that the challenge organism be added to the final portion of sterile diluent used to rinse the filter if a membrane filtration test method is used, or directly to the media containing the product if a direct inoculation test method is used. For non-culture-based methods, the feasibility of identifying microorganisms from a contaminated sample should be evaluated during validation. If a method does not have the capability to identify microorganisms to the species level, the validation protocol should require that an additional method for species identification be utilized for investigation of detected contaminants. The test organisms selected should reflect organisms that could be found in the product, process, or manufacturing environment.

The validation study design should contain the appropriate controls to evaluate the product sample's potential to generate false positive and false negative results. Validation of the sterility test should be performed on all new products, and repeated whenever there are changes in the test method that could potentially inhibit or enhance detection of viable contaminating microorganisms.

3. Verification

Verification is the confirmation that specified requirements have been fulfilled as determined by examination and provision of objective evidence. While validation of a sterility test method is the initial process of demonstrating that the procedure is suitable to detect viable contaminating microorganisms, verification occurs over the lifetime of the sterility test method and is the process of confirming that the sterility test and test components continue to be capable of consistently detecting viable

subsequently developed and approved by the Steering Committee in November 1996. The parent guideline is now renamed Q2(R1) as the Guideline Q2B on Methodology has been incorporated into the parent guideline. See http://www.ich.org/fileadmin/Public_Web_Site/ICH_Products/Guidelines/Quality/Q2_R1/Step4/Q2_R1_Guideline.pdf.

contaminating microorganisms in the samples analyzed. This verification activity may be necessary periodically or each time a sample is tested, depending upon the test method used. We propose to require that the sterility test and test components be verified, as appropriate, to demonstrate that they can continue to consistently detect viable contaminating microorganisms. (See section III.E.2 of this document for a more detailed discussion of verification.)

C. What information is needed in written procedures for sterility testing?

We propose to replace the requirement for *Interpretation of test results* in § 610.12(c) with the requirement that manufacturers establish, implement, and follow written procedures for sterility testing. Written procedures are essential to ensure consistency in sampling, testing, and interpretation of results, and to provide prospective acceptance criteria for the sterility test. Written procedures should include all steps to be followed in the sterility test method for initial and repeat tests. Procedures should be detailed and clear to eliminate ambiguity. Under the CGMP regulations, manufacturers are required to document that a drug product satisfactorily conforms to final specifications for the drug product (§ 211.165(a)). As such, scientifically sound and appropriate specifications, standards, sampling plans, and test procedures must be designed and written to ensure that materials conform to appropriate standards of sterility; and written procedures must include a description of the sampling method and the number of units per batch to be tested. (See § 211.165(c).)

Proposed § 610.12 allows the use of either culture-based or non-culture-based sterility test methods to evaluate material for sterility. There are marked differences between culture-based and non-culture-based sterility tests. Proposed § 610.12(c) provides the following minimum critical considerations that must be included in written procedures for both culture-based and non-culture-based sterility tests:

- The sterility test method to be used;
- The method of sampling, including the number, volume, and size of articles to be tested;
- Written specifications for the acceptance or rejection of each lot; and
- A statement of any other function critical to the particular sterility test method to ensure consistent and accurate results.

For culture-based sterility test methods, FDA believes the minimum critical considerations include the composition of media, growth promotion test requirements, and incubation conditions (time and temperature). For non-culture-based sterility test methods, the Agency believes critical considerations include the composition of test components, test parameters, and the controls used to verify the test method's ability to consistently detect the presence of viable contaminating microorganisms.

D. What is an appropriate sample for sterility testing?

Selection of an appropriate sample of a lot is critical for purposes of sterility testing. Current § 610.12(d) prescribes the number of samples for testing bulk and final container material. Due to the variety of products covered under § 610.12, including innovative products that may be introduced to the market in the future, such as cell and gene therapy products, we propose to eliminate the sample number requirement and instead require that the sample be appropriate to the material being tested. In selecting an appropriate sample size, proposed § 610.12(d) requires that the following minimal criteria be considered:

- The size or volume of the final product lot. For example, a final product lot size of 100,000 units would necessitate a greater number of samples to be evaluated than a final product lot size of 5,000 units;
- The duration of manufacturing of the drug product.⁸ For example, samples should be taken at different points of manufacture, which, at a minimum should include the beginning, middle, and end of manufacturing, in an effort to provide evidence of sterility of the drug product throughout the duration of the manufacturing process;
- The final container configuration and size. We believe this will ensure appropriate representation of the lot;
- The quantities or concentrations of inhibitors, neutralizers, and preservatives, if present, in the test material;
- For a culture-based test method, the volume of test material that results in a dilution of the product that was determined not to be bacteriostatic or fungistatic; and
- For a non-culture-based test method, the volume of test material that results in a dilution of the product that does not inhibit or otherwise hinder the detection of viable contaminating microorganisms.

⁸ See 21 CFR 210.3(b)(4) for definition of "drug product."

E. What is required to verify the sterility test?

Verification activities are necessary to demonstrate that sterility test methods can continue to reliably and consistently detect viable contaminating microorganisms. The degree of verification necessary depends upon the sterility test method employed. Depending upon the sterility test method, verification of each individual test might be appropriate. On the other hand, some sterility test methods may only need verification activities performed on the selected culture media or test organisms. We propose under § 610.12(e) that manufacturers perform verification activities appropriate for the sterility test method chosen as follows:

1. For culture-based test methods, manufacturers must conduct tests to demonstrate that the performance of the test organisms and culture media are acceptable to consistently detect the presence of viable contaminating microorganisms, including tests for each lot of culture media to verify its growth-promoting properties over the shelf-life of the media. Growth-promotion testing is important to demonstrate that the culture media are capable of supporting the growth of microorganisms.

2. For non-culture-based test methods, manufacturers must include, within the test itself, appropriate controls to demonstrate the ability of the test method to continue to reliably and consistently detect the presence of viable contaminating microorganisms.

F. Can a sterility test be repeated?

Current regulations in § 610.12(b) allow one time repeat testing of the bulk material to verify results after a positive initial test. Repeat testing for final container sterility testing is permitted twice, provided there was no evidence of growth in any test of the bulk material. Under current § 610.12(c), a lot meets the test requirements for sterility if no growth appears during the repeat tests. We propose to eliminate the reference to repeat testing of bulk material, because we are proposing that sterility testing will not be required on bulk material in most instances.⁹ We further propose to modify the provision for repeat testing to harmonize our regulatory expectations with current scientific understanding of quality manufacturing controls by eliminating the use of a second repeat test for final container material.

Consistent with USP Chapter 71, we propose that if the initial test indicates

⁹ See section III.A of this document for discussion of when sterility testing of bulk material may be appropriate.

the presence of microorganisms, then the product being examined does not comply with the sterility test requirements, unless a thorough investigation by the quality control unit can conclusively ascribe the initial evidence of microbial presence to a laboratory error or faulty materials used in conducting the test. If the test of the initial sample is found to be invalid, due to laboratory error or faulty test materials, the sterility test may be repeated one time. If no evidence of microorganisms is found in the repeat test, the product examined complies with the test requirements for sterility; if evidence of microorganisms is found in the repeat test, the product examined does not comply with the test requirements for sterility (USP Chapter 71).¹⁰

We further propose that for repeat testing, comparable product that is reflective of the initial sample in terms of sample location and the stage in the manufacturing process from which it was taken, and the same sterility test method must be used for both the initial and repeat tests. This is intended to ensure that the same volume of material is used for the initial test and each repeat test, and that the interpretation of the results is conducted in the same manner.

This proposed rule, if finalized, could result in the need for some manufacturers to modify their repeat test procedures. We consider these modifications to be minor changes in accordance with § 601.12(d) and to have a minimal potential for an adverse effect on the identity, strength, quality, purity, or potency of the product as they may relate to the safety or effectiveness of the product. Therefore, such changes must be reported in an annual report within 60 days of the anniversary date of approval of the BLA.

G. What records must be kept relating to sterility testing?

Currently, § 610.12(h) incorporates by reference the recordkeeping and maintenance requirements contained in 21 CFR 211.167 and 211.194. We propose to continue to maintain these requirements. This is intended to assure that data derived from sterility tests comply with established specifications. This includes describing the samples

received for testing, stating the method used to test the samples, identifying the location of relevant validation or verification data, recording all calculations performed, and stating how the results of tests performed compare to set specifications.

H. Are there any exceptions to sterility test requirements?

We propose to maintain the current exceptions to the sterility test requirements in § 610.12(g)(4)(i) for Whole Blood, Cryoprecipitated AHF, Platelets, Red Blood Cells, Plasma, Source Plasma, Smallpox Vaccine, Reagent Red Blood Cells, Anti-Human Globulin, and Blood Grouping Reagent. However, we request comment on whether any of these current exceptions should be removed. For example, we specifically request comment on whether to remove the exemption for platelets. Bacterial contamination of platelets is a recognized public health risk and the blood collection industry has already called for and implemented methods to detect and limit or inactivate bacteria in platelet components. Requiring testing for platelets would be consistent with these industry practices.

We propose to make minor modifications to the current exception in § 610.12(g)(4)(ii), under which the Director of CBER or CDER, as appropriate, determines that data submitted adequately establish that the mode of administration, the method of preparation, or the special nature of the product precludes or does not require a sterility test or that the sterility of the lot is not necessary to assure the safety, purity, and potency of the product. Specifically, we refer to the “route of administration” rather than the “mode of administration” and to the “any other aspect of the product” rather than “the special nature of the product” in proposed § 610.12(h)(2) so as to account for novel products that may be introduced to the market in the future, such as cell and gene therapy products. This proposed exception allows the Director of CBER or CDER, as appropriate, to exempt biological material from the sterility test requirements of this section if, based upon the scientific evidence presented in the BLA or BLA supplement, the data adequately establish that the route of administration, method of preparation, or any other aspect of the product precludes or does not necessitate a sterility test to assure the safety, purity, and potency of the product. This proposed exception also would allow the Director of CBER or CDER, as appropriate, to require sterility testing of the bulk material subject to any

conditions necessary to assure the safety, purity, and potency of the product.

We propose to eliminate the current exceptions under § 610.12(g)(1) and (g)(2) because they are no longer necessary given the flexibility built into this proposal. Specifically, the current exception in § 610.12(g)(1) allows for the use of different sterility test methods prescribed for certain products. We further propose to eliminate the current exception under § 610.12(g)(2), for using two sterility tests, one at incubation temperatures of 18° to 22 °C and one at 30° to 37 °C, in lieu of performing one test using an incubation temperature of 30° to 35 °C. The proposed language in § 610.12(b) requires the sterility test used to be “* * * appropriate to the material being tested * * *” and proposed § 610.12(c) requires manufacturers to specify incubation conditions (time and temperature) in written procedures for sterility testing when culture-based media are used. These proposed changes are intended to provide sufficient flexibility for the use of different sterility test methods, as appropriate.

We propose to eliminate the current exceptions for *Number of final containers more than 20, less than 200* (§ 610.12(g)(5)), *Number of final containers—20 or less*, (§ 610.12(g)(6)), *Samples—large volume of product in final containers*, (§ 610.12(g)(7)), and *Immune globulin preparations*. (§ 610.12(g)(9)). Instead, we propose to require manufacturers to determine the appropriate sample volume and size for the material being tested. (See proposed § 610.12(d).) Similarly, we propose to eliminate the special requirements in the *Diagnostic biological products not intended for injection* exception (§ 610.12(g)(8)). We believe the special requirements in current § 610.12(g)(8) are no longer necessary because proposed § 610.12(b)(1) requires the sterility test to be “appropriate to the material being tested” and proposed § 610.12(d) requires manufacturers to determine the appropriate sample volume and size for the material being tested.

IV. Proposed Revisions to Other Regulations

In addition to the revisions to the sterility regulation in § 610.12, we are also proposing revisions to two other FDA regulations as a result of this proposed rule. These proposed revisions are as follows:

- Section 600.3(q): Current § 600.3(q) defines “sterility” to mean “* * * freedom from viable contaminating microorganisms, as determined by the

¹⁰ See also Barr, Fish, and Schwemer, *Application of Pharmaceutical CGMPs*, the Food and Drug Law Institute, p. 149, (“In the case of a clearly identified laboratory error, the retest results substitute for the original test results * * * If, on the other hand, no laboratory error could be identified in the first test, then there is no scientific basis for discarding the initial out-of-specification results in favor of passing retest results”), 1997.

tests prescribed in § 610.12 of this chapter.” We are proposing to reword this definition to eliminate the term “prescribed” since, as proposed, § 610.12 would not prescribe specific test methods. Thus, we are proposing to amend § 600.3(q) to define “sterility” as “* * * freedom from viable contaminating microorganisms, as determined by tests conducted under § 610.12 of this chapter.”

• Section 680.3(c): Currently, § 680.3(c) states that: “A sterility test shall be performed on each lot of each Allergenic Product, as prescribed in § 610.12 of this chapter, with the following exceptions: * * * When bulk material is not prepared, the sterility test prescribed for bulk material shall be performed on each container of each stock concentrate at the time a stock concentrate is prepared, and the test sample shall be no less than 1 ml. from each stock concentrate container. * * * For lots consisting of no more than 5 final containers, the final container test shall be performed in accordance with § 610.12(g)(6) of this chapter using the sample therein prescribed or using a sample of no less than 0.25 ml. of product from each final container, divided in approximately equal proportions for testing in Fluid Thioglycollate and Soybean-Casein Digest Media. The test sample in the later alternative method may be an overflow in the final container. * * * For products prepared in sets of individual dilution series, a test sample of 0.25 ml. shall be taken from a final container of each dilution, which samples may be pooled and one half of the pooled material used for the test with Fluid Thioglycollate Medium and one half used for the test with Soybean-Casein Digest Medium. * * * Tablets and capsules need not be tested for sterility provided aseptic techniques are employed in their manufacture.”

We are proposing to amend § 680.3(c) to eliminate the term “prescribed”. As proposed, § 680.3(c) would say that “a sterility test shall be performed on each lot of each Allergenic Product, as required by § 610.12 of this chapter.” Additionally, we are proposing to eliminate § 680.3(c)(1) through (c)(4), because these exceptions would no longer be necessary under the proposed revisions to § 610.12. As proposed § 610.12 would eliminate the sterility test requirement on most bulk material, so the exception in § 680.3(c)(1) of how to test allergenic products when bulk material is not prepared, would no longer be needed. To the extent it is appropriate to perform the sterility test on bulk product for allergenics, the approach for such testing will be

explained in the BLA or BLA supplement that is submitted by the manufacturer and approved by FDA. Moreover, § 610.12, as proposed, would not prescribe a specific sample number and would not contain the specific exemption in § 610.12(g)(6) referenced in § 680.3(c)(2). The proposed requirement that the sample be appropriate to the materials being tested would accommodate the situation envisioned by current § 680.83(c)(2) for lots consisting of no more than five final containers. Current § 680.83(c)(3) should similarly be accommodated by the flexible language of the proposal such that sterility tests for sets of individual dilution series can be done on test samples that are appropriate to these material and thus a specific exception would no longer be needed for the sterility testing of these products. Finally, current § 680.83(c)(4) would be accommodated by the general exception in proposed § 610.12(h)(2) and thus this fourth exception would also be rendered unnecessary.

V. Legal Authority

FDA is issuing this regulation under the biological products provisions of the Public Health Service Act (42 U.S.C. 262 and 264) and the drugs and general administrative provisions of the Federal Food, Drug, and Cosmetic Act (sections 201, 301, 501, 502, 503, 505, 510, 701, and 704) (21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 371, and 374). Under these provisions of the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act, we have the authority to issue and enforce regulations designed to ensure that biological products are safe, effective, pure, and potent, and to prevent the introduction, transmission, and spread of communicable disease.

VI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires Agencies to analyze regulatory

options that would minimize any significant impact of a rule on small entities. Because this proposed rule generally increases flexibility for sterility testing and codifies an approach for retesting similar to the approach prescribed by the USP, and does not add any new regulatory responsibilities, the Agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$135 million, using the most current (2009) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

These amendments would generally provide manufacturers of biological products with more flexibility as to how they evaluate the sterility of their products and reduce the number of evaluations required. The net effect would be to reduce costs.

One part of these proposed amendments might impose some additional costs on manufacturers, however. Under the current regulations, if a biological product fails a sterility test, the test may be repeated. If the product passes a subsequent test, it is inferred that the first test was flawed and only the later results are used. Under the new regulations, the test may be repeated only if it is possible to “ascertain definitively” the initial failure to “a laboratory error or faulty materials used in conducting the sterility testing.”

This change could increase costs for manufacturers because of the additional products that would be discarded. The size of the increase would be determined by the number of additional lots discarded, the lot sizes and the production costs per unit. Some or all of the costs of this change would be mitigated by the reduction in losses associated with the provision of contaminated products.

This change is expected to affect few manufacturers. The method for sterility testing described in Chapter 71 of USP 33–NF 28 already limits the repetition of tests to circumstances similar to those described in these amendments. It is

anticipated that, in the absence of these amendments, the majority of manufacturers would limit the repetition of sterility tests in order to comply with USP Chapter 71. The Agency invites comment on the frequency with which manufacturers diverge from the retesting protocol of these amendments and the costs that limiting retests will impose.

The benefit of limiting retests would be fewer illnesses caused by contaminated biological products. We are unable to quantify the value of the reduction in illnesses because we do not have an estimate of the risk of illness from contaminated biological products or the decline in that risk associated with limiting retests.

VII. Environmental Impact

The Agency has determined under 21 CFR 25.31(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. The Paperwork Reduction Act of 1995

This proposed rule refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information in §§ 211.165 and 610.12 have been approved under OMB control number 0910–0139. Therefore, FDA tentatively concludes that the proposed requirements in this document are not subject to review by OMB because they do not constitute a “new collection of information” under the PRA.

IX. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency has concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

X. Proposed Effective Date

FDA is proposing that any final rule that may issue based on this proposal be effective 90 days after the date of its publication in the **Federal Register**.

XI. Request for Comments

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

List of Subjects

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 680

Biologics, Blood, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 600, 610, and 680 be amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

1. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

§ 600.3 [Amended]

2. Section 600.3 is amended in paragraph (q) by removing the phrase “prescribed in” and by adding in its place the phrase “conducted under”.

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

3. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

4. Section 610.12 is revised to read as follows:

§ 610.12 Sterility.

(a) *The test.* Except as provided in paragraph (h) of this section, manufacturers of biological products must perform sterility testing of each lot of each biological product’s final container material or other material, as appropriate and as approved in the biologics license application or supplement for that product.

(b) *Test requirements.* (1) The sterility test must be appropriate to the material being tested such that the material does not interfere with or otherwise hinder the test.

(2) The sterility test must be validated to demonstrate that the test is capable of reliably and consistently detecting the presence of viable contaminating microorganisms.

(3) The sterility test and test components must be verified to demonstrate that the test method can consistently detect the presence of viable contaminating microorganisms.

(c) *Written procedures.* Manufacturers must establish, implement, and follow written procedures for sterility testing that describe, at a minimum, the following:

(1) The sterility test method to be used;

(i) If culture-based test methods are used, include, at a minimum:

- (A) Composition of the culture media;
- (B) Growth-promotion test requirements; and
- (C) Incubation conditions (time and temperature).

(ii) If non-culture-based test methods are used, include, at a minimum:

- (A) Composition of test components;
- (B) Test parameters, including acceptance criteria; and
- (C) Controls used to verify the method’s ability to detect the presence of viable contaminating microorganisms.

(2) The method of sampling, including the number, volume, and size of articles to be tested;

(3) Written specifications for the acceptance or rejection of each lot; and

(4) A statement of any other function critical to the particular sterility test method to ensure consistent and accurate results.

(d) *The sample.* The sample must be appropriate to the material being tested, considering, at a minimum:

(1) The size and volume of the final product lot;

(2) The duration of manufacturing of the drug product;

(3) The final container configuration and size;

(4) The quantity or concentration of inhibitors, neutralizers, and preservatives, if present, in the tested material;

(5) For a culture-based test method, the volume of test material that results in a dilution of the product that is not bacteriostatic or fungistatic; and

(6) For a non-culture-based test method, the volume of test material that results in a dilution of the product that does not inhibit or otherwise hinder the detection of viable contaminating microorganisms.

(e) *Verification.* (1) For culture-based test methods, studies must be conducted to demonstrate that the performance of the test organisms and culture media are suitable to consistently detect the presence of viable contaminating microorganisms, including tests for each lot of culture media to verify its growth-promoting properties over the shelf-life of the media.

(2) For non-culture-based test methods, within the test itself, appropriate controls must be used to demonstrate the ability of the test method to continue to consistently detect the presence of viable contaminating microorganisms.

(f) *Repeat Test Procedures.* (1) If the initial test indicates the presence of microorganisms, the product does not comply with the sterility test requirements unless a thorough investigation by the quality control unit can ascribe definitively the microbial presence to a laboratory error or faulty materials used in conducting the sterility testing.

(2) If the investigation described in paragraph (f)(1) of this section finds that the initial test indicated the presence of microorganisms due to laboratory error or the use of faulty materials, a sterility test may be repeated one time. If no evidence of microorganisms is found in the repeat test, the product examined complies with the sterility test requirements. If evidence of microorganisms is found in the repeat test, the product examined does not comply with the sterility test requirements.

(3) If a repeat test is conducted, the same test method must be used for both the initial and repeat tests, and the repeat test must be conducted with comparable product that is reflective of the initial sample in terms of sample location and the stage in the manufacturing process from which it was obtained.

(g) *Records.* The records related to the test requirements of this section must be prepared and maintained as required by 21 CFR 211.167 and 211.194 of this chapter.

(h) *Exceptions.* Sterility testing must be performed on final container material or other appropriate material as defined in the approved biologics license

application or supplement and as described in this section, except as follows:

(1) Sterility testing is not required for Whole Blood, Cryoprecipitated Antihemophilic Factor, Platelets, Red Blood Cells, Plasma, Source Plasma, Smallpox Vaccine, Reagent Red Blood Cells, Anti-Human Globulin, and Blood Grouping Reagents.

(2) A manufacturer is not required to comply with the sterility test requirements if the Director of the Center for Biologics Evaluation and Research or the Director of the Center for Devices and Radiological Health, as appropriate, determines that data submitted in the biologics license application or supplement adequately establish that the route of administration, the method of preparation, or any other aspect of the product precludes or does not necessitate a sterility test to assure the safety, purity, and potency of the product.

PART 680—ADDITIONAL STANDARDS FOR MISCELLANEOUS PRODUCTS

5. The authority citation for 21 CFR part 680 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

6. Section 680.3 is amended by revising paragraph (c) to read as follows:

§ 680.3 Tests.

* * * * *

(c) *Sterility.* A sterility test shall be performed on each lot of each Allergenic Product as required by § 601.12 of this chapter.

Dated: June 16, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011-15346 Filed 6-20-11; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF JUSTICE

28 CFR Part 104

[Docket No. CIV 151]

RIN 1105-AB39

James Zadroga 9/11 Health and Compensation Act of 2010

AGENCY: Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: On January 2, 2011, President Obama signed into law the James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act). Title II of the Zadroga Act reactivates the September

11th Victim Compensation Fund of 2001 and requires a Special Master, appointed by the Attorney General, to provide compensation to any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001, or the debris removal efforts that took place in the immediate aftermath of those crashes. This rule proposes to amend the regulations implementing the Fund to reflect the changes made by the Zadroga Act.

DATES: Written comments must be postmarked and electronic comments must be submitted on or before August 5, 2011. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System (FDMS) will accept comments until Midnight Eastern Time at the end of that day.

ADDRESSES: Comments may be mailed to Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue, NW., Washington, DC 20530. However, the Department encourages commenters to submit their comments using <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue, NW., Washington, DC 20530, telephone 855-885-1555 (TTY 855-885-1558).

SUPPLEMENTARY INFORMATION:

Comment Period: The Department of Justice has allocated 45 days for public comment. This timeline is appropriate in light of the proposed regulations' substantial incorporation of the regulations that were previously used, the Department's experience in operating the Victim Compensation Fund, and the public interest in beginning operation of the Fund as soon as possible.

Posting of Public Comments: Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name and address) voluntarily submitted by the commenter.

You are not required to submit personal identifying information in order to comment on this rule. Nevertheless, if you want to submit personal identifying information (such

as your name and address) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONAL IDENTIFYING INFORMATION" in the first paragraph of your comment. You also must locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. If you wish to inspect the agency's public docket file in person by appointment, please see the paragraph above entitled **FOR FURTHER INFORMATION CONTACT**.

Background

Pursuant to Title IV of Public Law 107-42 ("Air Transportation Safety and System Stabilization Act") (2001 Act), the September 11th Victim Compensation Fund of 2001 was open for claims from December 21, 2001, through December 22, 2003. The Fund provided compensation to eligible individuals who were physically injured as a result of the terrorist-related aircraft crashes of September 11, 2001, and to personal representatives of those who died as a result of the crashes.

Special Master Kenneth R. Feinberg was appointed by the Attorney General to administer the Fund. The Fund was governed by Interim Final Regulations issued on December 21, 2001, *see* 66 FR 66274, and by Final Regulations issued on March 13, 2002, *see* 67 FR 11233. During its two years of operation, the Fund distributed over \$7.049 billion to survivors of 2,880 persons killed in the September 11th attacks and to 2,680 individuals who were injured in the attacks or in the rescue efforts conducted thereafter. In 2004, Special Master Feinberg issued a report describing how the fund was administered. *See* Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001,

available at http://www.justice.gov/final_report.pdf.

On January 2, 2011, President Obama signed the Zadroga Act into law. Title I of the Zadroga Act establishes a program within the Department of Health and Human Services to provide medical monitoring and treatment benefits to eligible individuals. Title II amends the 2001 Act and reopens the Fund. Among other changes, Title II adds new categories of beneficiaries for the Fund and sets new filing deadlines. It also imposes a cap on the total awards that can be paid by the Fund and limits the fees that an attorney may receive for awards made under the Fund.

The Zadroga Act, as originally enacted, did not appropriate administrative funds for the Fund to begin taking and processing claims. On April 15, 2011, President Obama signed into law Public Law 112-10, the continuing budget resolution for 2011, which permits the Fund to draw on the money originally allocated in the Zadroga Act in order to pay for its administrative expenses, beginning on October 1, 2011.

The Attorney General has appointed Sheila L. Birnbaum to serve as Special Master and to administer the Fund.

Statement From the Special Master

The James Zadroga 9/11 Health and Compensation Act of 2010 reopens the September 11th Victim Compensation Fund of 2001 to provide compensation to those who were physically injured or who died in the immediate aftermath of the terrorist attacks of September 11, 2001, including those who were injured during the clean-up and debris removal operations at a 9/11 crash site. This extension recognizes the considerable efforts of and effects on those engaged in or in the immediate vicinity of the response, recovery, and clean-up operations. The intent of the extension of the Fund is to provide fair and consistent compensation for those who are eligible and to do so in an efficient and timely manner.

As I stated when I was appointed, my goal is for the September 11th Victim Compensation Fund to be fair, transparent, and easy to navigate. In order to achieve that goal, I intend to build on the strong foundation that was established by Special Master Kenneth Feinberg in the first iteration of the Victim Compensation Fund and listen carefully to the views and concerns expressed by those who will be most affected by the program. I have sought to publish these proposed regulations quickly, so that there will be ample time for others to review them and for comments to be fully evaluated and the

regulations revised, where appropriate, before the Victim Compensation Fund opens later this year. Given the Victim Compensation Fund's success in its previous iteration, I propose to implement the original processes where I can and to propose additional or different procedures where the Zadroga Act requires a different approach.

At the outset, I would highlight some key principles that will guide my effort to create a process that is fair, transparent, and easy to navigate. First, I intend to make decisions based on the best scientific and medical evidence that is available. The Zadroga Act requires the Special Master to make a number of decisions about who is eligible to bring a claim, based on the nature of the individual's injuries, how it was caused, and whether the individual was present in an area where there was a demonstrable risk of physical harm resulting from the crashes. In order to make these determinations in a fair manner, I intend to look to the evidence that scientists and medical professionals rely on in exercising their best professional judgment. I also intend for the Victim Compensation Fund to keep pace with the evolving science and to ensure that as we learn more about conditions that may have been caused by the crashes or related debris-removal efforts, we are able to compensate claimants accordingly.

Second, Congress has appropriated a capped amount—\$2.775 billion payable over a period of years—for this program. Only \$875 million may be spent in the first five years of the program with the remainder being paid out in the sixth year. It is important therefore to assure that funds are targeted to the payment of eligible claims and to avoid procedures or guidelines that will dilute those payments. Funds used to process ineligible claims or for unnecessary administrative costs result in fewer funds available to pay intended and deserving claimants. In implementing the program, I intend to initiate procedures that will permit efficiency without sacrificing fairness, and to seek ways to minimize administrative expenses, thereby maximizing the amount available for distribution to eligible claimants.

Third, it is exceedingly important, in my view, to fully investigate the facts and circumstances surrounding the response, clean-up and debris removal activities necessitated by the attacks and the injuries that have resulted from these activities. To achieve these goals over the next several months, I will hold meetings with interested parties to explain the Victim Compensation Fund

and the proposed regulations, to hear your thoughts, and to answer as many questions as I can. I also look forward to reviewing your written comments about these proposed regulations, so that I can make the best decisions possible to refine the regulations and administer the program.

Discussion

The following discussion explains the proposed updates to the regulations governing the Fund. The proposed regulations are based on the Final Regulations governing the Fund from 2001–2004. Nevertheless, the Zadroga Act requires certain changes. Section I discusses proposed changes to the eligibility criteria; Section II discusses proposed procedures for amending claims; Section III discusses awards and proration of awards; and Section IV discusses proposed changes to the claims evaluation process. The text of the proposed regulations, as amended, is set forth following these explanatory sections. More detailed information, including a comparison of the original regulations to these proposed regulations, will be available on the Victim Compensation Fund's Web site at www.usdoj.gov/vcf.

I. Eligibility

Title II of the Zadroga Act sets criteria for determining whether a claimant is eligible to receive compensation from the Fund. The Act made changes to the criteria that governed eligibility in the Fund's previous iteration. In order to be eligible for the Fund, Title II of the Zadroga Act requires an individual to have been present at a "9/11 crash site" at the time or in the immediate aftermath of the crashes, and have suffered "physical harm or death as a result of" one of the air crashes or debris removal. In making these determinations, the Special Master is mindful that Congress has appropriated a limited amount of funds for paying awards, and therefore that inappropriate expansions of eligibility may result in lower awards for deserving claimants.

(a) *The Definition of "9/11 Crash Site"*

In requiring that a claimant have been present at a "9/11 crash site" in order to receive compensation from the Fund, Title II of the Zadroga Act recognizes that such sites include more than just the World Trade Center, Pentagon, and Shanksville, Pennsylvania sites and the buildings that were destroyed as a result. The Zadroga Act also encompasses two other areas.

(1) Sufficiently Close to the Site

First, Title II of the Zadroga Act defines "9/11 crash site" to include both the crash sites themselves and any area that is contiguous to one of the crash sites that the Special Master "determines was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from" the impact of the aircraft or subsequent fire, explosions, or building collapses.

During the Fund's first iteration, Special Master Feinberg applied a regulation that required him to make this same determination. At that time, the most prevalent physical injuries were blunt trauma injuries suffered by those who were struck by debris or who were in the zone in which there was a demonstrable risk of physical harm from falling debris, explosions, or fire. Accordingly, the relevant area was defined to include the immediate area surrounding the World Trade Center: starting from the intersection of Reade and Center Streets, the northern boundary ran west along Reade Street to the Hudson River; the western boundary was the Hudson River; the southern boundary ran from the Hudson River, east along the line of W. Thames Street, Edgar Street and Exchange Place to Nassau Street; and the eastern boundary, starting from the intersection of Exchange Place and Nassau Street, ran north along Nassau Street to the intersection of Center and Reade Streets. See Final Report of the Special Master for the September 11th Victim Compensation Fund of 2001 at 19 and n. 53. The Zadroga Act, which covers conditions that may have been caused over longer periods of time and thus are not limited to harms caused by falling debris, states that the term "9/11 crash sites" "includ[es]" that original area but could also include other areas.

In determining which other areas to include, the Special Master will consider scientific evidence regarding the risks of physical harm resulting from the crashes and the text and structure of the Act, including the relationship between Title I and Title II and the goal of allocating the available funds to deserving claimants. Given these considerations, this proposed rule suggests that the term "9/11 crash site" includes the area in Manhattan south of the line that runs along Reade Street from the Hudson River to the intersection of Reade Street and Centre Street, south on Centre Street to the Brooklyn Bridge, and along the Brooklyn Bridge, or any other area contiguous to the crash sites that the Special Master determines was sufficiently close to the site that there

was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses (including the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured individuals). These proposed boundaries are substantially broader than those used in the Fund's first iteration and narrower than boundaries used for the World Trade Center (WTC) Health Program in Title I of the Act. The Special Master invites comments on the proposal.

(2) Routes of Debris Removal

Second, the Zadroga Act defines the term "9/11 crash site" to include "any area related to, or along, routes of debris removal, such as barges and Fresh Kills." The Special Master invites comments that provide information regarding the routes of debris removal.

(b) *Physical Harm or Death as a Result of the Crash or Debris Removal*

In requiring that a claimant have suffered "physical harm or death as a result of" one of the air crashes or the debris removal, the Zadroga Act also requires the Special Master to determine which physical harms and deaths were "a result of" the crashes or debris removal within the meaning of the statute. The Department notes that Title II of the Zadroga Act does not provide additional specificity about the harms that are to be covered by the Fund.

However, Title I of the Zadroga Act, which establishes the WTC Health Program, contains a list of illnesses and health conditions for which exposure to air borne toxins, other hazards and any other adverse conditions resulting from the September 11, 2001 terrorists attacks could be determined by experienced medical professionals to be substantially likely to have been a significant factor in aggravating, causing, contributing to illness or health condition, as well as procedures for adding additional conditions to the list over time. That title also provides that in order for an individual to receive treatment under the WTC Health Program, there must be an individual determination that the WTC attacks were "substantially likely to be a significant factor in aggravating, contributing to, or causing the illness or health condition."

Accordingly, the Special Master proposes that the Fund maintain and publish a list of presumptively covered conditions that resulted from the air crashes or debris removal, and that this list shall consist of the physical injuries and conditions that are found, under the WTC Health Program, to be WTC-related

health conditions. The Special Master will update this list so that it includes not only those physical conditions listed in Title I of the Zadroga Act, but also any additional physical conditions that the WTC Health Program determines to be WTC-related. The list of presumptively covered conditions will be published on the Fund's Web site.

The Special Master notes that as in the Fund's first iteration, the statute limits eligible injuries to those consisting of "physical harm." Accordingly, as in the Fund's first iteration, the statutory language does not permit the Fund to cover individuals with only mental and emotional injuries, even if the mental and emotional injuries are covered by the WTC Health Program.

Finally, the Special Master notes that the proposed regulations does not make the list of presumptively covered conditions the only conditions for which a claimant may seek coverage from the Fund. Where the claimant is otherwise eligible for an award and establishes extraordinary circumstances that were not adequately taken into account in the list of presumptively covered conditions, the proposed rules will permit the Special Master to find the claimant eligible even if the injury in question is not on the list of presumptively covered conditions. Because the list of presumptively covered conditions will be set based on the WTC Health Program's process for making decisions based on the best available science, it is anticipated that these instances will be rare.

II. Amendments of Claims

The 2001 Act provided that "not more than one claim may be submitted under this Title by an individual or on behalf of a deceased individual." The Zadroga Act did not amend this limitation. This provision does not appear to bar individuals who previously submitted claims from amending those earlier claims if additional relevant information has become available. The Special Master proposes that claimants be permitted to amend their claims to reflect the following circumstances:

(i) An injury that the claimant had not suffered (or did not reasonably know the claimant suffered) at the time the claimant filed the previous claim;

(ii) A condition that the Special Master has identified, since the time the claimant filed the previous claim, as a presumptively covered condition;

(iii) An injury for which the claimant was compensated by the Fund, but only if that injury has substantially worsened, resulting in damages or loss

that was not previously compensated; and;

(iv) Claims for which the individual is an eligible claimant as a result of amendments contained in the James Zadroga 9/11 Health and Compensation Act of 2010, Title II of Public Law 111-347.

Accordingly, the proposed regulations permit claimants to amend claims in those circumstances.

III. Awards and Prorating of Awards

The 2001 Act provides that the Fund will pay benefits for both "economic losses," which consist of pecuniary losses such as lost earnings, medical expenses, and other costs, and "noneconomic losses," which include losses for physical and emotional pain, suffering, and loss of companionship. The Zadroga Act did not amend those provisions; however, the Zadroga Act does limit the total amount of funds available for paying awards and prohibits the Fund from distributing more than a certain amount of compensation within the first five years.

(a) Advance Benefits

The 2001 rule included a provision for "advance benefits" for eligible claimants to be paid during the pendency of the claims process, in recognition of the exigency of the circumstances and the urgency of the need for providing some immediate compensation to those who, without a moment's notice, were physically injured and the families of those who were killed. The context at this point is different. The statute already contemplates two separate rounds of payments, one in the first five years and a second in the program's sixth year. Further, the administrative costs associated with additional rounds of payments reduce the funds available to pay claimants. Accordingly, the proposed rule does not include a provision for payment of advance benefits.

(b) Methodology for Calculating Awards

The determination of "economic losses" will be made, as in the Fund's first iteration, on a case-by-case basis according to the losses that each claimant has demonstrated. In the Fund's first iteration, the Special Master determined that the "noneconomic losses" of a claimant who was killed in the 9/11 crashes themselves would be \$250,000 plus an additional \$100,000 for each dependent. Those dollar values were consistent with the compensation that Congress made available under existing federal programs for certain citizens who have also died, often

without a moment's notice: public safety officers who are killed while on duty and members of our military who are killed in the line of duty while serving our nation. See 67 FR 11239 (Mar. 13, 2002). Those awards for noneconomic losses were presumed correct, but individuals were able to submit additional evidence that would justify a higher amount in a particular instance. For individuals who suffered physical injuries, rather than death, the noneconomic awards determined adjusted based on the extent and duration of the physical harm.

The Special Master proposes that the methodologies for establishing, and the compensation offered for, harms in the first iteration of the Fund are initially appropriate here. The Special Master will continue to consider whether noneconomic damages for such deaths should be adjusted.

(c) Proration of Awards

In the Zadroga Act, Congress appropriated \$2.775 billion to be provided by the Fund during this second iteration. Of this amount, the Act provides that only \$875 million may be spent during the program's first five years, with the remaining funds to be paid during the sixth year.

In order to ensure that the \$875 million cap is not exceeded during those first five years, the Zadroga Act requires the Special Master to ratably reduce the amount of compensation paid to claimants during that time to ensure that all claimants entitled to payment "receive a payment" during that period and to ensure that the \$875 million cap is not exceeded. The Act further requires that claimants whose payments are ratably reduced during this time are to receive a second payment in the year after the claims period has ended (July 1, 2016 to June 30, 2017), consisting of the difference between the amount that the claimant should have been paid under the Act and the reduced amount paid during the first five years. The regulations accordingly require the Special Master to prorate payments in a manner consistent with the statute, based on available information regarding potential future claims and available funds. The Special Master invites comments on the best manner to fulfill the statute's purposes in this respect.

IV. Procedure for Claims Evaluation

Because the \$2.775 billion appropriated by Congress for the Fund must pay for claimant awards as well as the Fund's administrative expenses, it is important for the Fund to keep administrative expenses low in order to

maximize the amount of funds available for claimants. Accordingly, the Special Master proposes eliminating one of the two procedures used previously for evaluating claims.

Previously, claimants could select one of two procedures: Track A or Track B. Under Track A, the Fund would determine eligibility and a presumed award based on the claimant's filings. The claimant could then either (1) accept the presumed award and request payment or (2) request a hearing for further review of the determination. Importantly, every claimant had the option of a hearing to determine whether the claimant's presumptive award was correct.

Under Track B, claimants proceeded directly to a hearing following a finding of eligibility. Only after that hearing would the Fund make an award determination, which was not subject to any further review or appeal.

The proposed regulations eliminate Track B. In doing so, the proposed regulations seek to reduce administrative expenses in order to maximize the funds available to pay claimants. Hearings are a substantial source of administrative expenses, and eliminating the initial hearing under Track B would still ensure that any claimant who wanted a hearing, after receiving his or her presumptive award, could receive one. Because some claimants who might have opted for a Track B initial hearing will find that they are satisfied with their presumptive award, some hearings will be avoided—and the costs associated with those hearings can instead be used to pay claimants.

V. Other Changes

The proposed regulations address a number of other issues. Among other things, the regulations address the ability of individuals who have settled civil actions to participate in the Fund, and the amounts that attorneys may charge claimants for services rendered in connection with a claim to the Fund. The Special Master invites comments on these and any other issues relating to the Fund.

Regulatory Certifications

Paperwork Reduction Act of 1995

This rule proposes to implement Title II of the Zadroga Act which reactivates the September 11th Victim Compensation Fund of 2001. In order to be able to evaluate claims and provide compensation, the Fund will need to collect information from an individual (or a personal representatives of a deceased individual) who suffered

physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001 or the debris removal efforts that took place in the immediate aftermath of those crashes. Accordingly, the Department of Justice (DOJ), Civil Division will submit an information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The Department will also publish a Notice in the Federal Register soliciting public comment on the information collection associated with this rulemaking.

Regulatory Flexibility Act

These regulations set forth procedures by which the Federal government will award compensation benefits to eligible victims of the September 11, 2001 terrorist attacks. Under 5 U.S.C. 601(6), the term "small entity" does not include the Federal government, the party charged with incurring the costs attendant to the implementation and administration of the Victims Compensation Fund. Accordingly, the Department has reviewed this rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities because it provides compensation to eligible individuals who were physically injured as a result of the terrorist-related aircraft crashes of September 11, 2001, and compensation through a "personal representative" for those who were killed as a result of those crashes. This rule provides compensation to individuals, not to entities.

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), Principles of Regulation and in accordance with Executive Order 13563 "Improving Regulation and Regulatory Review" section 1(b) General Principles of Regulation.

The Department of Justice has determined that this rule is an "economically significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has been reviewed by the Office of Management and Budget.

Further, both 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. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

Assessment of Benefits, Costs, and Alternatives.

As required by Executive Order 13563 and Executive Order 12866 for economically significant regulatory actions, the Department has assessed the benefits and costs anticipated from this rulemaking and considered whether there are reasonably feasible alternatives to this rulemaking, including considering whether there are reasonably viable non-regulatory actions that could be taken in lieu of this rulemaking. The purpose of this rulemaking is to provide the legal and administrative framework necessary to provide compensation to any individual (or a personal representative of a deceased individual) who suffered physical harm or was killed as a result of the terrorist-related aircraft crashes of September 11, 2001 or the debris removal efforts that took place in the immediate aftermath of those crashes, as provided by Title II of the Zadroga Act. The primary benefits and costs of this rulemaking are both set by statute as Congress has appropriated a capped amount—\$2.775 billion payable over a period of years—for this program. Because the \$2.775 billion appropriated by Congress for the Fund must pay for claimant awards as well as the Fund's administrative expenses, it is important for the Fund to keep administrative expenses low in order to maximize the amount of funds available for claimants. Finally, based on past practice with the operation of the original Fund and the necessity to establish the legal and administrative framework for the reopened Fund, the Department concludes that there are no viable non-regulatory actions that it could take to implement the Zadroga Act in a fair and efficient manner.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and

responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. However, the Department of Justice has worked cooperatively with state and local officials in the affected communities in the preparation of this rule. Also, the Department individually notified national associations representing elected officials regarding this rulemaking.

Executive Order 12988—Civil Justice Reform

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

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects in 28 CFR Part 104

Disaster assistance, Disability benefits, Terrorism.

Accordingly, for the reasons set forth in the preamble, Part 104 of chapter I of Title 28 of the Code of Federal Regulations is proposed to be amended by revising part 104 to read as follows:

PART 104—SEPTEMBER 11TH VICTIM COMPENSATION FUND

Subpart A—General; Eligibility

- 104.1 Purpose.
- 104.2 Eligibility definitions and requirements.
- 104.3 Other definitions.
- 104.4 Personal Representative.
- 104.5 Foreign claims.

104.6 Amendments to this part.

Subpart B—Filing for Compensation

- 104.21 Presumptively covered conditions.
- 104.22 Filing for compensation.

Subpart C—Claim Intake, Assistance, and Review Procedures

- 104.31 Procedure for claims evaluation.
- 104.32 Eligibility review.
- 104.33 Hearing.
- 104.34 Publication of awards.
- 104.35 Claims deemed abandoned by claimants.

Subpart D—Amount of Compensation for Eligible Claimants

- 104.41 Amount of compensation.
- 104.42 Applicable state law.
- 104.43 Determination of presumed economic loss for decedents.
- 104.44 Determination of presumed noneconomic losses for decedents.
- 104.45 Determination of presumed economic loss for claimants who suffered physical harm.
- 104.46 Determination of presumed noneconomic losses for claimants who suffered physical harm.
- 104.47 Collateral sources.

Subpart E—Payment of Claims

- 104.51 Payments to eligible individuals.
- 104.52 Distribution of award to decedent's beneficiaries.

Subpart F—Limitations

- 104.61 Limitation on civil actions.
- 104.62 Time limit on filing claims.
- 104.63 Subrogation.

Subpart G—Measures To Protect the Integrity of the Compensation Program

- 104.71 Procedures to prevent and detect fraud.

Subpart H—Attorney Fees

- 104.81 Limitation on attorney fees.

Authority: Title IV of Pub. L. 107–42, 115 Stat. 230, 49 U.S.C. 40101 note; Title II of Pub.L. 111–347, 124 Stat. 3623.

Subpart A—General; Eligibility

§ 104.1 Purpose.

This part implements the provisions of the September 11th Victim Compensation Fund of 2001, Title IV of Public Law 107–42, 115 Stat. 230 (Air Transportation Safety and System Stabilization Act), as amended by the James Zadroga 9/11 Health and Compensation Act of 2010, Title II of Public Law 111–347, to provide compensation to eligible individuals who were physically injured as a result of the terrorist-related aircraft crashes of September 11, 2001 or debris removal during the immediate aftermath of those crashes, and to the “personal representatives” of those who were killed as a result of the crashes. All compensation provided through the Fund will be on account of personal physical injuries or death.

§ 104.2 Eligibility definitions and requirements.

(a) *Eligible claimants.* The term eligible claimants means:

- (1) Individuals present at a 9/11 crash site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes and who suffered physical harm, as defined herein, as a direct result of the crashes or debris removal;
- (2) The Personal Representatives of deceased individuals aboard American Airlines flights 11 or 77 and United Airlines flights 93 or 175; and
- (3) The Personal Representatives of individuals who were present at a 9/11 crash site at the time of or in the immediate aftermath of the crashes and who died as a direct result of the terrorist-related aircraft crash.

(4) The term eligible claimants does not include any individual or representative of an individual who is identified to have been a participant or conspirator in the terrorist-related crashes of September 11.

(b) *Immediate aftermath.* The term immediate aftermath means any period beginning with the terrorist-related aircraft crashes of September 11, 2001, and ending on May 30, 2002.

(c) *Physical harm.* (1) The term physical harm shall mean a physical injury to the body that was treated by a medical professional within a reasonable time from the date of discovering such harm; and

(2) The physical injury must be verified by medical records created by or at the direction of the medical professional who provided the medical care contemporaneously with the care.

(d) *Personal Representative.* The term Personal Representative shall mean the person determined to be the Personal Representative under § 104.4 of this part.

(e) *WTC Health Program.* The term WTC Health Program means the World Trade Center Health Program established by Title I of Public Law 111–347 (codified at Title XXXIII of the Public Health Service Act, 42 U.S.C. 300mm–300mm–61).

(f) *WTC-related health condition.* The term WTC-related health condition means those health conditions identified as WTC-related by Title I of Public Law 111–347 and by regulations implementing that Title.

(g) *9/11 crash site.* The term 9/11 crash site means:

- (1) The World Trade Center site, Pentagon site, and Shanksville, Pennsylvania site; or
- (2) The buildings or portions of buildings that were destroyed as a result of the terrorist-related airplane crashes of September 11, 2001; or

(3) The area in Manhattan south of the line that runs along Reade Street from the Hudson River to the intersection of Reade Street and Centre Street, south on Centre Street to the Brooklyn Bridge, and along the Brooklyn Bridge, or any other area contiguous to the crash sites that the Special Master determines was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses (including the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured individuals); or

(4) Any area related to, or along, routes of debris removal, such as barges and Fresh Kills.

§ 104.3 Other definitions.

(a) *Beneficiary*. The term beneficiary shall mean a person to whom the Personal Representative shall distribute all or part of the award under § 104.52 of this Part.

(b) *Dependents*. The Special Master shall identify as dependents those persons so identified by the victim on his or her federal tax return for the year prior to the year of the victim's death (or those persons who legally could have been identified by the victim on his or her federal tax return for the year prior to the year of the victim's death) unless:

(1) The claimant demonstrates that a minor child of the victim was born or adopted on or after January 1 of the year of the victim's death;

(2) Another person became a dependent in accordance with then-applicable law on or after January 1 of the year of the victim's death; or

(3) The victim was not required by law to file a federal income tax return for the year prior to the year of the victim's death.

(c) *Spouse*. The Special Master shall identify as the spouse of a victim the person reported as spouse on the victim's federal tax return for the year prior to the year of the victim's death (or the person who legally could have been identified by the victim on his or her federal tax return for the year prior to the year of the victim's death) unless:

(1) The victim was married or divorced in accordance with applicable state law on or after January 1 of the year of the victim's death; or

(2) The victim was not required by law to file a federal income tax return for the year prior to the year of the victim's death.

(d) *The Act*. The Act, as used in this part, shall mean Public Law 107-42, 115 Stat. 230 ("Air Transportation Safety and System Stabilization Act"), 49

U.S.C. 40101 note, as amended by the James Zadroga 9/11 Health and Compensation Act of 2010, Title II of Public Law 111-347.

(e) *Victim*. The term victim shall mean an eligible injured claimant or a decedent on whose behalf a claim is brought by an eligible Personal Representative.

(f) *Substantially Complete*. A claim becomes substantially complete when, in the opinion of the Special Master or her designee, the claim contains sufficient information and documentation to determine both the claimant's eligibility and, if the claimant is eligible, an appropriate award.

§ 104.4 Personal Representative.

(a) *In general*. The Personal Representative shall be:

(1) An individual appointed by a court of competent jurisdiction as the Personal Representative of the decedent or as the executor or administrator of the decedent's will or estate.

(2) In the event that no Personal Representative or executor or administrator has been appointed by any court of competent jurisdiction, and such issue is not the subject of pending litigation or other dispute, the Special Master may, in her discretion, determine that the Personal Representative for purposes of compensation by the Fund is the person named by the decedent in the decedent's will as the executor or administrator of the decedent's estate. In the event no will exists, the Special Master may, in her discretion, determine that the Personal Representative for purposes of compensation by the Fund is the first person in the line of succession established by the laws of the decedent's domicile governing intestacy.

(b) *Notice to beneficiaries*. (1) Any purported Personal Representative must, before filing an Eligibility Form, provide written notice of the claim (including a designated portion of the Eligibility Form) to the immediate family of the decedent (including, but not limited to, the decedent's spouse, former spouses, children, other dependents, and parents), to the executor, administrator, and beneficiaries of the decedent's will, and to any other persons who may reasonably be expected to assert an interest in an award or to have a cause of action to recover damages relating to the wrongful death of the decedent.

(2) Personal delivery or transmission by certified mail, return receipt requested, shall be deemed sufficient notice under this provision. The claim

forms shall require that the purported Personal Representative certify that such notice (or other notice that the Special Master deems appropriate) has been given. In addition, as provided in § 104.21(b)(5) of this part, the Special Master may publish a list of individuals who have filed Eligibility Forms and the names of the victims for whom compensation is sought, but shall not publish the content of any such form.

(c) *Objections to Personal Representatives*. Objections to the authority of an individual to file as the Personal Representative of a decedent may be filed with the Special Master by parties who assert a financial interest in the award up to 30 days following the filing by the Personal Representative. If timely filed, such objections shall be treated as evidence of a "dispute" pursuant to paragraph (d) of this section.

(d) *Disputes as to identity*. The Special Master shall not be required to arbitrate, litigate, or otherwise resolve any dispute as to the identity of the Personal Representative. In the event of a dispute over the appropriate Personal Representative, the Special Master may suspend adjudication of the claim or, if sufficient information is provided, calculate the appropriate award and authorize payment, but place in escrow any payment until the dispute is resolved either by agreement of the disputing parties or by a court of competent jurisdiction. Alternatively, the disputing parties may agree in writing to the identity of a Personal Representative to act on their behalf, who may seek and accept payment from the Fund while the disputing parties work to settle their dispute.

§ 104.5 Foreign claims.

In the case of claims brought by or on behalf of foreign citizens, the Special Master may alter the requirements for documentation set forth herein to the extent such materials are unavailable to such foreign claimants.

§ 104.6 Amendments to this part.

Claimants are entitled to have their claims processed in accordance with the provisions of this Part that were in effect at the time that their claims were submitted under § 104.22(d). All claims will be processed in accordance with the current provisions of this Part, unless the claimant has notified the Special Master that he or she has elected to have the claim resolved under the regulations that were in effect at the time that the claim was submitted under § 104.22(d).

Subpart B—Filing for Compensation**§ 104.21 Presumptively covered conditions.**

(a) *In general.* The Special Master shall maintain and publish on the Fund's Web site a list of presumptively covered conditions that resulted from the terrorist-related air crashes of September 11, 2001, or debris removal. The list shall consist of physical injuries that are determined to be WTC-related health conditions by the WTC Health Program.

(b) *Updates.* The Special Master shall update the list of presumptively covered conditions as the list of WTC-related health conditions by the WTC Health Program is updated. Claims may then be amended pursuant to § 104.22(e)(ii).

(c) *Conditions other than presumptively covered conditions.* A claimant may also be eligible for payment under § 104.51 where the claimant—

(1) Presents extraordinary circumstances not adequately addressed by the list of presumptively covered conditions; and

(2) Is otherwise eligible for payment.

§ 104.22 Filing for compensation.

(a) *Compensation form; "filing."* A claim shall be deemed "filed" for purposes of section 405(b)(3) of the Act (providing that the Special Master shall issue a determination regarding the matters that were the subject of the claim not later than 120 calendar days after the date on which a claim is filed), and for any time periods in this part, when it is substantially complete.

(b) *Eligibility Form.* The Special Master shall develop an Eligibility Form that will require the claimant to provide information necessary for determining the claimant's eligibility to recover from the Fund.

(1) The Eligibility Form may require that the claimant certify that he or she has dismissed any pending lawsuit seeking damages as a result of the terrorist-related airplane crashes of September 11, 2001, or for damages arising from or related to debris removal (except for actions seeking collateral source benefits) within 90 days of the effective date of this part pursuant to section 405(c)(3)(C)(ii) of the Act and that there is no pending lawsuit brought by a dependent, spouse, or beneficiary of the victim.

(2) The Special Master may require as part of the notice requirement pursuant to § 104.4(b) that the claimant provide copies of a designated portion of the Eligibility Form to the immediate family of the decedent (including, but not limited to, the spouse, former spouses,

children, other dependents, and parents), to the executor, administrator, and beneficiaries of the decedent's will, and to any other persons who may reasonably be expected to assert an interest in an award or to have a cause of action to recover damages relating to the wrongful death of the decedent.

(3) The Eligibility Form may require claimants to provide the following proof:

(i) Proof of death: Death certificate or similar official documentation;

(ii) Proof of presence at site: Documentation sufficient to establish presence at a 9/11 crash site, which may include, without limitation, a death certificate, proof of residence, records of employment or school attendance, contemporaneous medical records, contemporaneous records of federal, state, city or local government, an affidavit or declaration of the decedent's or injured claimant's employer, or other sworn statement (or unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the victim;

(iii) Proof of physical harm: Certification of a conclusion by the WTC Health Program that the claimant suffers from a WTC-related health condition; a health form provided by the Fund and completed by a licensed medical professional.

(iv) Personal Representative: Copies of relevant legal documentation, including court orders; letters testamentary or similar documentation; proof of the purported Personal Representative's relationship to the decedent; copies of wills, trusts, or other testamentary documents; and information regarding other possible beneficiaries as requested by the Eligibility Form;

(v) Any other information that the Special Master deems necessary to determine the claimant's eligibility.

(4) The Special Master may also require waivers, consents, or authorizations from claimants to obtain directly from third parties tax returns, medical information, employment information, or other information that the Special Master deems relevant in determining the claimant's eligibility or award, and may request an opportunity to review originals of documents submitted in connection with the Fund.

(5) The Special Master may publish a list of individuals who have filed Eligibility Forms and the names of the victims for whom compensation is sought, but shall not publish the content of any such form.

(c) *Personal Injury Compensation Form and Death Compensation Form.* The Special Master shall develop a Personal Injury Compensation Form that each injured claimant must submit. The

Special Master shall also develop a Death Compensation Form that each Personal Representative must submit. These forms shall require the claimant to provide certain information that the Special Master deems necessary to determining the amount of any award, including information concerning income, collateral sources, benefits, settlements and attorneys' fees relating to civil actions described in section 405(c)(3)(C)(iii) of the Act, and other financial information, and shall require the claimant to state the factual basis for the amount of compensation sought. It shall also allow the claimant to submit certain other information that may be relevant, but not necessary, to the determination of the amount of any award.

(1) Claimants shall, at a minimum, submit all tax returns that were filed for the period beginning three years prior to the year of death or discovery of the injury and ending with the year the claim was filed or the year of death. The Special Master may, at the Special Master's discretion, require that claimants submit copies of tax returns or other records for any other period of years the Special Master deems appropriate for determination of an award. The Special Master may also require waivers, consents, or authorizations from claimants to obtain directly from third parties medical information, employment information, or other information that the Special Master deems relevant to determining the amount of any award.

(2) Claimants may attach to the "Personal Injury Compensation Form" or "Death Compensation Form" any additional statements, documents or analyses by physicians, experts, advisors, or any other person or entity that the claimant believes may be relevant to a determination of compensation.

(d) *Submission of a claim.* Section 405(c)(3)(C) of the Act provides that upon the submission of a claim under the Fund, the claimant waives the right to file a civil action (or to be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001, except for civil actions to recover collateral source obligations and civil actions against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act. A claim shall be deemed submitted for purposes of section 405(c)(3)(C) of the Act when the claim is deemed filed pursuant to § 104.21, regardless of whether any time limits are stayed or tolled.

(e) *Amendment of claims.* A claimant who has previously submitted a claim may amend such claim to include

(1) An injury that the claimant had not suffered (or did not reasonably know the claimant suffered) at the time the claimant filed the previous claim;

(2) A condition that the Special Master has identified and published in accordance with 104.21(a), since the time the claimant filed the previous claim, as a presumptively covered condition;

(3) An injury for which the claimant was previously compensated by the Fund, but only if that injury has substantially worsened, resulting in damages or loss that was not previously compensated; and

(4) Claims for which the individual is an eligible claimant as a result of amendments contained in the James Zadroga 9/11 Health and Compensation Act of 2010, Title II of Public Law 111–347.

(f) *Provisions of information by third parties.* Any third party having an interest in a claim brought by a Personal Representative may provide written statements or information regarding the Personal Representative's claim. The Claims Evaluator or the Special Master or the Special Master's designee may, at his or her discretion, include the written statements or information as part of the claim.

Subpart C—Claim Intake, Assistance, and Review Procedures

§ 104.31 Procedure for claims evaluation.

(a) *Initial review.* Claims Evaluators shall review the forms filed by the claimant and either deem the claim “filed” (pursuant to § 104.21(a)) or notify the claimant of any deficiency in the forms or any required documents.

(b) *Procedure.* The Claims Evaluator shall determine eligibility and the claimant's presumed award pursuant to §§ 104.43 to 104.46 of this part and, within 75 days of the date the claim was deemed filed, notify the claimant in writing of the eligibility determination, the amount of the presumed award, and the right to request a hearing before the Special Master or her designee under § 104.33 of this part. After an eligible claimant has been notified of the presumed award, within 30 days the claimant may either accept the presumed compensation determination as the final determination and request payment, or may instead request a review before the Special Master or her designee pursuant to § 104.33. Claimants found to be ineligible may appeal pursuant to § 104.32.

(c) *Multiple claims from the same family.* The Special Master may treat claims brought by or on behalf of two or more members of the same immediate family as related or consolidated claims for purposes of determining the amount of any award.

§ 104.32 Eligibility review.

Any claimant deemed ineligible by the Claims Evaluator may appeal that decision to the Special Master or her designee by filing an eligibility appeal within 30 days on forms created by the office of the Special Master.

§ 104.33 Hearing.

(a) *Supplemental submissions.* The claimant may prepare and file Supplemental Submissions within 21 calendar days from notification of the presumed award. The Special Master shall develop forms appropriate for Supplemental Submissions.

(b) *Conduct of hearings.* Hearings shall be before the Special Master or her designee. The objective of hearings shall be to permit the claimant to present information or evidence that the claimant believes is necessary to a full understanding of the claim. The claimant may request that the Special Master or her designee review any evidence relevant to the determination of the award, including without limitation: The nature and extent of the claimant's injury; evidence of the claimant's presence at a 9/11 crash site; factors and variables used in calculating economic loss; the identity of the victim's spouse and dependents; the financial needs of the claimant; facts affecting noneconomic loss; and any factual or legal arguments that the claimant contends should affect the award. Claimants shall be entitled to submit any statements or reports in writing. The Special Master or her designee may require authentication of documents, including medical records and reports, and may request and consider information regarding the financial resources and expenses of the victim's family or other material that the Special Master or her designee deems relevant.

(c) *Location and duration of hearings.* The hearings shall, to the extent practicable, be scheduled at times and in locations convenient to the claimant or his or her representative. The hearings shall be limited in length to a time period determined by the Special Master or her designee.

(d) *Witnesses, counsel, and experts.* Claimants shall be permitted, but not required, to present witnesses, including expert witnesses. The Special Master or her designee shall be

permitted to question witnesses and examine the credentials of experts. The claimant shall be entitled to be represented by an attorney in good standing, but it is not necessary that the claimant be represented by an attorney. All testimony shall be taken under oath.

(e) *Waivers.* The Special Master shall have authority and discretion to require any waivers necessary to obtain more individualized information on specific claimants.

(f) *Award Appeals.* For award appeals, the Special Master or her designee shall make a determination whether:

(1) There was an error in determining the presumptive award, either because the claimant's individual criteria were misapplied or for another reason; or

(2) The claimant presents extraordinary circumstances not adequately addressed by the presumptive award.

(g) *Determination.* The Special Master shall notify the claimant in writing of the final amount of the award, but need not create or provide any written record of the deliberations that resulted in that determination. There shall be no further review or appeal of the Special Master's determination. In notifying the claimant of the final amount of the award, the Special Master may designate the portions or percentages of the final award that are attributable to economic loss and non-economic loss, respectively, and may provide such other information as appropriate to provide adequate guidance for a court of competent jurisdiction and a personal representative.

§ 104.34 Publication of awards.

The Special Master reserves the right to publicize the amounts of some or all of the awards, but shall not publish the name of the claimants or victims that received each award. If published, these decisions would be intended by the Special Master as general guides for potential claimants and should not be viewed as precedent binding on the Special Master or her staff.

§ 104.35 Claims deemed abandoned by claimants.

The Special Master and her staff will endeavor to evaluate promptly any information submitted by claimants. Nonetheless, it is the responsibility of the claimant to keep the Special Master informed of his or her current address and to respond within the duration of this five-year program to requests for additional information. Claims outstanding at the end of this program because of a claimant's failure to

complete his or her filings shall be deemed abandoned.

Subpart D—Amount of Compensation for Eligible Claimants

§ 104.41 Amount of compensation.

As provided in section 405(b)(1)(B)(ii) of the Act, in determining the amount of compensation to which a claimant is entitled, the Special Master shall take into consideration the harm to the claimant, the facts of the claim, and the individual circumstances of the claimant. The individual circumstances of the claimant may include the financial needs or financial resources of the claimant or the victim's dependents and beneficiaries. As provided in section 405(b)(6) of the Act, the Special Master shall reduce the amount of compensation by the amount of collateral source compensation the claimant (or, in the case of a Personal Representative, the victim's beneficiaries) has received or is entitled to receive as a result of the terrorist-related aircraft crashes of September 11, 2001. In no event shall an award (before collateral source compensation has been deducted) be less than \$500,000 in any case brought on behalf of a deceased victim with a spouse or dependent, or \$300,000 in any case brought on behalf of a deceased victim who was single with no dependents.

§ 104.42 Applicable state law.

The phrase "to the extent recovery for such loss is allowed under applicable state law," as used in the statute's definition of economic loss in section 402(5) of the Act, is interpreted to mean that the Special Master is not permitted to compensate claimants for those categories or types of economic losses that would not be compensable under the law of the state that would be applicable to any tort claims brought by or on behalf of the victim.

§ 104.43 Determination of presumed economic loss for decedents.

In reaching presumed determinations for economic loss for Personal Representatives bringing claims on behalf of decedents, the Special Master shall consider sums corresponding to the following:

(a) *Loss of earnings or other benefits related to employment.* The Special Master, as part of the process of reaching a "determination" pursuant to section 405(b) of the Act, shall develop a methodology and publish schedules, tables, or charts that will permit prospective claimants to estimate determinations of loss of earnings or other benefits related to employment based upon individual circumstances of

the deceased victim, including: The age of the decedent as of the date of death; the number of dependents who survive the decedent; whether the decedent is survived by a spouse; and the amount and nature of the decedent's income for recent years. The Decedent's salary/income in the three years preceding the year of death (or for other years the Special Master deems relevant) shall be evaluated in a manner that the Special Master deems appropriate. The Special Master may, if she deems appropriate, take an average of income figures for the three years preceding the year of death, and may also consider income for other periods that she deems appropriate, including published pay scales for victims who were government or military employees. The Special Master's methodology and schedules, tables, or charts shall yield presumed determinations of loss of earnings or other benefits related to employment for annual incomes up to but not beyond the 98th percentile of individual income in the United States for the year preceding the year of death. In cases where the victim was a minor child, the Special Master may assume an average income for the child commensurate with the average income of all wage earners in the United States. For victims who were members of the armed services or government employees such as firefighters or police officers, the Special Master may consider all forms of compensation (or pay) to which the victim was entitled. For example, military service members' and uniformed service members' compensation includes all of the various components of compensation, including, but not limited to, basic pay (BPY), basic allowance for housing (BAH), basic allowance for subsistence (BAS), federal income tax advantage (TAD), overtime bonuses, differential pay, and longevity pay.

(b) *Medical expense loss.* This loss equals the out-of-pocket medical expenses that were incurred as a result of the physical harm suffered by the victim (i.e., those medical expenses that were not paid for or reimbursed through health insurance or other programs for which the claimant was not charged). This loss shall be calculated on a case-by-case basis, using documentation and other information submitted by the Personal Representative.

(c) *Replacement services loss.* For decedents who did not have any prior earned income, or who worked only part time outside the home, economic loss may be determined with reference to replacement services and similar measures.

(d) *Loss due to death/burial costs.* This loss shall be calculated on a case-by-case basis, using documentation and other information submitted by the personal representative and includes the out-of-pocket burial costs that were incurred.

(e) *Loss of business or employment opportunities.* Such losses shall be addressed through the procedure outlined above in paragraph (a) of this section.

§ 104.44 Determination of presumed noneconomic losses for decedents.

The presumed non-economic losses for decedents shall be \$250,000 plus an additional \$100,000 for the spouse and each dependent of the deceased victim. Such presumed losses include a noneconomic component of replacement services loss.

§ 104.45 Determination of presumed economic loss for claimants who suffered physical harm.

In reaching presumed determinations for economic loss for claimants who suffered physical harm (but did not die), the Special Master shall consider sums corresponding to the following:

(a) *Loss of earnings or other benefits related to employment.* The Special Master may determine the loss of earnings or other benefits related to employment on a case-by-case basis, using documentation and other information submitted by the claimant, regarding the actual amount of work that the claimant has missed or will miss without compensation. Alternatively, the Special Master may determine the loss of earnings or other benefits related to employment by relying upon the methodology created pursuant to § 104.43(a) and adjusting the loss based upon the extent of the victim's physical harm.

(1) *Disability; in general.* In evaluating claims of disability, the Special Master will, in general, make a determination regarding whether the claimant is capable of performing his or her usual profession in light of the injuries.

(2) *Total permanent disability.* With respect to claims of total permanent disability, the Special Master may accept a determination of disability made by the Social Security Administration as evidence of disability without any further medical evidence or review. The Special Master may also consider determinations of permanent total disability made by other governmental agencies or private insurers in evaluating the claim. The Special Master may require that the claimant submit an evaluation of the claimant's disability and ability to

perform his or her occupation prepared by medical experts.

(3) Partial disability. With respect to claims of partial disability, the Special Master may consider evidence of the effect of the partial disability on the claimant's ability to perform his or her usual occupation as well as the effect of the partial disability on the claimant's ability to participate in usual daily activities.

(b) *Medical Expense Loss.* This loss equals the out-of-pocket medical expenses that were incurred as a result of the physical harm suffered by the victim (i.e., those medical expenses that were not paid for or reimbursed through health insurance or other programs for which the claimant was not charged). In addition, this loss equals future out-of-pocket medical expenses that will be incurred as a result of the physical harm suffered by the victim (i.e., those medical expenses that will not be paid for or reimbursed through health insurance). These losses shall be calculated on a case-by-case basis, using documentation and other information submitted by the claimant.

(c) *Replacement services loss.* For injured claimants who did not have any prior earned income, or who worked only part-time outside the home, economic loss may be determined with reference to replacement services and similar measures.

(d) *Loss of business or employment opportunities.* Such losses shall be addressed through the procedure outlined above in paragraph (a) of this section.

§ 104.46 Determination of presumed noneconomic losses for claimants who suffered physical harm.

The Special Master may determine the presumed noneconomic losses for claimants who suffered physical harm (but did not die) by relying upon the noneconomic losses described in § 104.44 and adjusting the losses based upon the extent of the victim's physical harm. Such presumed losses include any noneconomic component of replacement services loss.

§ 104.47 Collateral sources.

(a) *Payments that constitute collateral source compensation.* The amount of compensation shall be reduced by all collateral source compensation, including life insurance, pension funds, death benefits programs, payments by Federal, State, or local governments related to the terrorist-related aircraft crashes of September 11, 2001 or debris removal, including under the World Trade Center Health Program established under section 3001 of the

Public Health Service Act, and payments made pursuant to the settlement of a civil action as described in section 405(c)(3)(C)(iii) of the Act. In determining the appropriate collateral source offset for future benefit payments, the Special Master may employ an appropriate methodology for determining the present value of such future benefits. In determining the appropriate value of offsets for pension funds, life insurance and similar collateral sources, the Special Master may, as appropriate, reduce the amount of offsets to take account of self-contributions made or premiums paid by the victim during his or her lifetime. In determining the appropriate collateral source offset for future benefit payments that are contingent upon one or more future event(s), the Special Master may reduce such offsets to account for the possibility that the future contingencies may or may not occur. In cases where the recipients of collateral source compensation are not beneficiaries of the awards from the Fund, the Special Master shall have discretion to exclude such compensation from the collateral source offset where necessary to prevent beneficiaries from having their awards reduced by collateral source compensation that they will not receive.

(b) *Payments that do not constitute collateral source compensation.* The following payments received by claimants do not constitute collateral source compensation:

(1) The value of services or in-kind charitable gifts such as provision of emergency housing, food, or clothing; and

(2) Charitable donations distributed to the beneficiaries of the decedent, to the injured claimant, or to the beneficiaries of the injured claimant by privately funded charitable entities; provided however, that the Special Master may determine that funds provided to victims or their families through a privately funded charitable entity constitute, in substance, a payment described in paragraph (a) of this section.

(3) Tax benefits received from the Federal government as a result of the enactment of the Victims of Terrorism Tax Relief Act.

Subpart E—Payment of Claims

§ 104.51 Payments to eligible individuals.

(a) *Payment date.* Subject to subsection (c) of this section, the Special Master shall authorize payment of an award to a claimant not later than 20 days after the date on which:

(1) The claimant accepts the presumed award; or

(2) A final award for the claimant is determined after a hearing on appeal.

(b) *Failure to accept or appeal presumed award.* If a claimant fails to accept or appeal the presumed award determined for that claimant within 30 days, the presumed award shall be deemed to have been accepted and all rights to appeal the award shall have been waived.

(c) *Pro-ratio and payment of remaining claims.* The James Zadroga 9/11 Health and Compensation Act of 2010, Title II of Public Law 111-347, requires that the total amount of Federal funds paid for expenditures including compensation with respect to claims filed on or after [OPEN DATE], 2011 will not exceed \$2,775,000,000. Furthermore, the total amount of Federal funds expended during the period from [EFFECTIVE DATE OF FINAL RULE], through [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], may not exceed \$875,000,000.

(1) *In general.* The Special Master shall ratably reduce the amount of compensation due claimants in a manner to ensure, to the extent possible, that all claimants who are determined to be entitled to a payment receive a payment during the period from [EFFECTIVE DATE OF FINAL RULE], to [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], and that the total amount of all such payments made during that 5-year period do not exceed the amount available under law during that period. The Special Master may periodically adjust the method of ratable reduction in light of available information regarding potential future claims and available funds.

(2) *Subsequent payments.* Subject to paragraph (c)(3) of this section, in any case in which the amount of a claim is ratably reduced pursuant to paragraph (c)(1) of this section, on or after [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], but in no event later than [DATE 6 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], the Special Master shall pay to the claimant the amount that is equal to the difference between:

(i) The amount that the claimant would have been paid under the presumed award; and

(ii) The amount the claimant was paid during the period from [EFFECTIVE DATE OF FINAL RULE], 2011 to [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

(3) In the event that the total amount of all claims under paragraph (c)(2) of this section exceeds the amount available under law, the Special Master

shall ratably reduce the amount of compensation due claimants in a manner to ensure, to the extent possible, that all claimants who are determined to be entitled to an additional payment receive their pro-rated share of the available funds.

§ 104.52 Distribution of award to decedent's beneficiaries.

The Personal Representative shall distribute the award in a manner consistent with the law of the decedent's domicile or any applicable rulings made by a court of competent jurisdiction. The Personal Representative shall, before payment is authorized, provide to the Special Master a plan for distribution of any award received from the Fund. Notwithstanding any other provision of these regulations or any other provision of state law, in the event that the Special Master concludes that the Personal Representative's plan for distribution does not appropriately compensate the victim's spouse, children, or other relatives, the Special Master may direct the Personal Representative to distribute all or part of the award to such spouse, children, or other relatives.

Subpart F—Limitations

§ 104.61 Limitation on civil actions.

(a) *General.* Section 405(c)(3)(C) of the Act provides that upon the submission of a claim under the Fund, the claimant waives the right to file a civil action (or be a party to an action) in any Federal or State court for damages sustained as a result of the terrorist-related aircraft crashes of September 11, 2001, or for damages arising from or related to debris removal, except that this limitation does not apply to recover collateral source obligations, or to a civil action against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act. The Special Master shall take appropriate steps to inform potential claimants of section 405(c)(3)(C) of the Act.

(b) *Pending actions.* Claimants who have filed a civil action or who are a party to such an action as described in paragraph (a) of this section may not file a claim with the Special Master unless they withdraw from such action not later than [DATE 90 DAYS AFTER EFFECTIVE DATE OF FINAL RULE].

(c) *Settled actions.* In the case of an individual who settled a civil action described in Section 405(c)(3)(C) of the Act, such individual may not submit a claim under this title unless such action was commenced after December 22, 2003, and a release of all claims in such

action was tendered prior to January 2, 2011.

§ 104.62 Time limit on filing claims.

(a) *In general.* A claim may be filed by an individual (or by a personal representative on behalf of a deceased individual) during the period beginning on [EFFECTIVE DATE OF FINAL RULE], and ending on [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE], as follows:

(1) In the case that the individual knew (or reasonably should have known) before [EFFECTIVE DATE OF FINAL RULE], 2011 that the individual suffered a physical harm at a 9/11 crash site as a result of the terrorist-related aircraft crashes of September 11, 2001, or as a result of debris removal, and that the individual knew (or should have known) before such specified date that the individual was eligible to file a claim under this title, the individual may file a claim not later than [DATE 2 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

(2) In the case that the individual first knew (or reasonably should have known) on or after [EFFECTIVE DATE OF FINAL RULE], that the individual suffered such a physical harm or that the individual first knew (or should have known) on or after that date that the individual was eligible to file a claim under this title, the individual may file a claim not later than the last day of the 2-year period beginning on the date that the individual first knew (or should have known) that the individual both suffered from such harm and was eligible to file a claim under this title, but in no event beyond [DATE 5 YEARS AFTER EFFECTIVE DATE OF FINAL RULE].

(b) *Determination by Special Master.* The Special Master or the Special Master's designee should determine the timeliness of all claims under paragraph (a) of this section.

§ 104.63 Subrogation.

Compensation under this Fund does not constitute the recovery of tort damages against a third party nor the settlement of a third party action, and the United States shall be subrogated to all potential claims against third party tortfeasors of any victim receiving compensation from the Fund. For that reason, no person or entity having paid other benefits or compensation to or on behalf of a victim shall have any right of recovery, whether through subrogation or otherwise, against the compensation paid by the Fund.

Subpart G—Measures To Protect the Integrity of the Compensation Program

§ 104.71 Procedures to prevent and detect fraud.

(a) *Review of claims.* For the purpose of detecting and preventing the payment of fraudulent claims and for the purpose of assuring accurate and appropriate payments to eligible claimants, the Special Master shall implement procedures to:

(1) Verify, authenticate, and audit claims;

(2) Analyze claim submissions to detect inconsistencies, irregularities, duplication, and multiple claimants; and

(3) Ensure the quality control of claims review procedures.

(b) *Quality control.* The Special Master shall institute periodic quality control audits designed to evaluate the accuracy of submissions and the accuracy of payments, subject to the oversight of the Inspector General of the Department of Justice.

(c) *False or fraudulent claims.* The Special Master shall refer all evidence of false or fraudulent claims to appropriate law enforcement authorities.

Subpart H—Attorney Fees

§ 104.81 Limitation on Attorney Fees

(a) *In general.* (1) *In general.* Notwithstanding any contract, the representative of an individual may not charge, for services rendered in connection with the claim of an individual under this title, more than 10 percent of an award paid under this title on such claim.

(2) *Certification.* In the case of any claim in connection with which services covered by this section were rendered, the representative shall certify his or her compliance with this section and shall provide such information as the Special Master requires to ensure such compliance.

(b) *Limitation.* (1) *In general.* Except as provided in paragraph (b)(2) of this section, in the case of an individual who was charged a legal fee in connection with the settlement of a civil action described in section 405(c)(3)(C)(iii) of the Act, the representative who charged such legal fee may not charge that individual any amount for compensation for services rendered in connection with a claim filed under this title.

(2) *Exception.* If the legal fee charged in connection with the settlement of a civil action described in section 405(c)(3)(C)(iii) of the Act of an individual is less than 10 percent of the aggregate amount of compensation

awarded to such individual through such settlement, the representative who charged such legal fee to that individual may charge an amount for compensation for services rendered to the extent that such amount charged is not more than—

(i) Ten (10) percent of such aggregate amount through the settlement, minus

(ii) The total amount of all legal fees charged for services rendered in connection with such settlement.

(c) *Discretion to lower fee.* In the event that the Special Master finds that the fee limit set by paragraph (a) or (b) of this section provides excessive compensation for services rendered in connection with such claim, the Special Master may, in the discretion of the Special Master, award as reasonable compensation for services rendered an amount lesser than that permitted in paragraph (a) of this section.

Dated: June 16, 2011.

Sheila L. Birnbaum,
Special Master.

[FR Doc. 2011-15459 Filed 6-20-11; 8:45 am]

BILLING CODE 4410-12-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

[SATS No. CO-040-FOR, Docket ID: OSM-2011-0002]

Colorado Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Colorado regulatory program (hereinafter, the “Colorado program”) under the Surface Mining Control and Reclamation Act of 1977 (“SMCRA” or “the Act”). Colorado proposes both additions of and revisions to the rules and regulations of the Colorado Mined Land Reclamation Board for Coal Mining, concerning valid existing rights, ownership and control, and other regulatory issues. Colorado intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency.

This document gives the times and locations that the Colorado program and proposed amendment to that program are available for your inspection, the comment period during which you may

submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., mountain standard time July 21, 2011. If requested, we will hold a public hearing on the amendment on July 18, 2011. We will accept requests to speak until 4 p.m., mountain standard time, on July 6, 2011.

ADDRESSES: You may submit comments, identified by “CO-040-FOR”, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The proposed rule has been assigned Docket ID OSM-2011-0002. If you would like to submit comments via the Federal eRulemaking portal, go to <http://www.regulations.gov> and follow the instructions.

- *Mail, Hand Delivery/Courier:* Kenneth Walker, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202, Phone: (303) 293-5012, Fax: (303) 293-5058, E-mail: kwalker@osmre.gov.

Instructions: All submissions received must include the agency name and “CO-040-FOR.” For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Comment Procedures heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: Access to the docket to review copies of the Colorado program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Office of Surface Mining Reclamation and Enforcement’s (OSM’s) Denver Field Division. In addition, you may review a copy of the amendment during regular business hours at the following locations:

Kenneth Walker, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202, Phone: (303) 293-5012, Fax: (303) 293-5058, E-mail: kwalker@osmre.gov.

David Berry, Director, Office of Mined Land Reclamation, Colorado Division of Reclamation, Mining, and Safety, Department of Natural Resources, 1313 Sherman Street, Suite 215, Denver, CO 80203, E-mail: David.Berry@state.co.us.

Or anytime at: <http://www.regulations.gov>, Docket ID OSM-2011-0002.

SUPPLEMENTARY INFORMATION:

- I. Background on the Colorado Program
- II. Description of the Proposed Amendment
- III. Public Comment Procedures
- IV. Procedural Determinations

I. Background on the Colorado Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Colorado program on December 15, 1980. You can find background information on the Colorado program, including the Secretary’s findings, the disposition of comments, and the conditions of approval of the Colorado program in the December 15, 1980, **Federal Register** (45 FR 82173). You can also find later actions concerning Colorado’s program and program amendments at 30 CFR 906.10, 906.15, 906.16, and 906.30.

II. Description of the Proposed Amendment

By letter dated April 8, 2011, Colorado sent us a proposed amendment to its approved regulatory program (Administrative Record Docket ID No. OSM-2011-0002) under SMCRA (30 U.S.C. 1201 *et seq.*). Colorado submitted the amendment to address all required rule changes OSM identified by letters to Colorado dated April 4, 2008, and October 2, 2009, under 30 CFR 732.17(c). These included changes to Colorado’s rules for valid existing rights and ownership and control. The amendment also includes changes made at Colorado’s own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Specifically, Colorado proposes substantive revisions to the Colorado Code of Regulations at 2 CCR 407-2 Rules 1.07 (Procedures for Valid Existing Rights Determinations), 2.01 (General Requirements for Permits), 2.02 (General Requirements for Coal Exploration), 2.03 (Application for Permit for Surface Coal Mining and Reclamation Operations: Minimum

Requirements for Legal, Financial, Compliance, and Related Information), 2.04 (Application for Permit for Surface Coal Mining and Reclamation Operations: Minimum Requirements for Information on Environmental Resources), 2.05 (Application for Permit for Surface Coal Mining and Reclamation Operations: Minimum Requirements for Operation and Reclamation Plans), 2.07 (Public Participation and Approval of Permit Applications), 2.08 (Permit Review, Revisions and Renewals and Transfer, Sale and Assignment), 2.11 (Challenging Ownership or Control Listings and Findings), 4.03 (Roads), 4.05 (Hydrologic Balance), 4.06 (Topsoil), 4.07 (Sealing of Drilled Holes and Underground Openings), 4.08 (Use of Explosives), 4.14 (Backfilling and Grading), 4.15 (Revegetation), 4.16 (Postmining Land Use), 4.20 (Subsidence Control), 4.25 (Operations on Prime Farmland), 5.03 (Enforcement), and 5.06 (Alternative Enforcement). Additionally, Colorado proposes revisions to and additions of definitions supporting those proposed rule changes.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Colorado program.

Electronic or Written Comments

Send your written comments to OSM at the addresses given above. Your comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see Dates). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Denver Field Division may not be logged in.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., mountain standard time on July 6, 2011. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public; if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 25, 2011.

Allen D. Klein,

Director, Western Region.

[FR Doc. 2011-15397 Filed 6-20-11; 8:45 am]

BILLING CODE 4310-05-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No. WY-040-FOR; Docket ID OSM-2011-0004]

Wyoming Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We are announcing receipt of a proposed amendment to the Wyoming regulatory program (hereinafter, the “Wyoming program”) under the Surface Mining Control and Reclamation Act of 1977 (“SMCRA” or “the Act”). Wyoming proposes revisions and additions to rules concerning noncoal mine waste, valid existing rights, and individual civil penalties. Wyoming intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency.

This document gives the times and locations that the Wyoming program and proposed amendment to that program are available for your

inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., M.D.T. July 21, 2011. If requested, we will hold a public hearing on the amendment on July 18, 2011. We will accept requests to speak until 4 p.m., M.D.T. on July 6, 2011.

ADDRESSES: You may submit comments by either of the following two methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. This proposed rule has been assigned Docket ID: OSM–2011–0004. If you would like to submit comments through the Federal eRulemaking Portal, go to <http://www.regulations.gov> and follow the instructions.

- *Mail/Hand Delivery/Courier:* Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018.

For detailed instructions on submitting comments and additional information on the rulemaking process, see III. Public Comment Procedures in the **SUPPLEMENTARY INFORMATION** section of this document.

In addition to viewing the docket and obtaining copies of documents at <http://www.regulations.gov>, you may review copies of the Wyoming program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, may be obtained at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of the amendment by contacting OSM's Casper Field Office.

Jeffrey Fleischman, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Dick Cheney Federal Building, POB 11018, 150 East B Street, Casper, Wyoming 82601–1018, (307) 261–6547, jfleischman@osmre.gov.

John V. Corra, Director, Wyoming Department of Environmental Quality, Herschler Building, 122 West 25th Street, Cheyenne, Wyoming 82002, (307) 777–7046, jcorra@wyo.gov.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fleischman, Telephone: (307) 261–6547. Internet: jfleischman@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Wyoming Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, “a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Description of the Proposed Amendment

By letter dated April 28, 2011, Wyoming sent us a proposed amendment to its approved regulatory program (Administrative Record Docket ID No. OSM–2011–0004) under SMCRA (30 U.S.C. 1201 *et seq.*). Wyoming submitted the amendment partly in response to a February 13, 2008, letter that we sent to Wyoming notifying them that OSM's December 17, 1999, Valid Existing Rights (VER) rule changes had been upheld in court and the State should respond to our April 2, 2001, letter sent in accordance with 30 CFR 732.17(c). That letter required Wyoming to submit amendments to ensure its program remains consistent with the Federal program. This amendment package is intended to address all required rule changes pertaining to VER. Wyoming also submitted the proposed amendment to address required program amendments at 30 CFR 950.16(r), (s), and (t), respectively, and deficiencies identified in a November 7, 1988, letter we sent in accordance with 30 CFR 732.17(c). These included changes to Wyoming's rules for noncoal mine waste, and individual civil penalties.

Specifically, Wyoming proposes to amend the Land Quality Division Coal Rules and Regulations at Chapter 2,

Section 2(a)(v)(A) and 2(a)(v)(A)(II) (adjudication requirements for noncoal mine waste); Chapter 2, Section 5(a)(xx) and (xxi) (permit application plans for the management and disposal of noncoal mine waste); Chapter 4, Section 2(c)(xiii) (general environmental protection performance standards for noncoal mine waste); Chapter 7, Section 1(a) (underground coal mining permit application content requirements); Chapter 7, Section 2(b) (applicability of noncoal mine waste management and performance standards to underground mining operations); Chapter 1, Section 2(f) (definition of VER and the applicable standards and procedures used to evaluate VER claims); Chapter 10, Section 2(a), (b)(xiii) and 3(c)(iv) (clarifying language regarding the operation of VER in relation to coal exploration activities); Chapter 12, Section 1(a)(v)–(xi) (VER determination and permitting procedures); and Chapter 16, Section 4 (procedural mechanisms related to the assessment of individual civil penalties). The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Wyoming program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that

your entire comment—including your personal identifying information—may be made publicly available in the electronic docket for this rulemaking at <http://www.regulations.gov>. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., M.D.T. on July 6, 2011. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing. If only one person expresses an interest, a public meeting rather than a hearing may be held, with the results included in the docket for this rulemaking.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the

determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 9, 2011.

Allen D. Klein,

Director, Western Region.

[FR Doc. 2011-15400 Filed 6-20-11; 8:45 am]

BILLING CODE 4310-05-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-HQ-OAR-2009-0443; FRL-9321-2]

EPA Responses to State and Tribal 2008 Lead Designation Recommendations: Notice of Availability and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and public comment period.

SUMMARY: Notice is hereby given that the EPA has posted its responses to State and tribal designation recommendations for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS) on its Internet Web site. The EPA invites public comments on its responses during the comment period specified in the **DATES** section. The EPA sent responses directly to the states and tribes on or about June 15, 2011, and intends to make final designation determinations for the 2008 Pb NAAQS by October 14, 2011.

DATES: Comments must be received on or before July 21, 2011. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR-2009-0443, by one of the following methods:

- <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *E-mail:* a-and-r-docket@epa.gov. Attention Docket ID No. EPA-HQ-OAR-2009-0443.
- *Fax:* 202-566-9744. Attention Docket ID No. EPA-HQ-OAR-2009-0443.
- *Mail:* Air Docket, Attention Docket ID No. EPA-HQ-OAR-2009-0443, Environmental Protection Agency, Mail

Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

• *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue, NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2009-0443. The 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 or other information whose disclosure is restricted by statute. Do not submit information that you consider to be confidential business information 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 the 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 the 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, the 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 the EPA is unable to read your comment and cannot contact you for clarification due to technical difficulties, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to Section II 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, *i.e.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be

publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For general questions concerning this action, please contact Rhonda Wright, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Planning Division, C539-04, Research Triangle Park, NC 27711, telephone (919) 541-1087, e-mail at wright.rhonda@epa.gov. For questions regarding the EPA Region 1, please contact Robert McConnell, U.S. EPA, telephone (617) 918-1046, e-mail at mccconnell.robert@epa.gov. For questions regarding the EPA Region 2, please contact Mazeeda Khan, U.S. EPA, telephone (212) 637-3715, email at khan.mazeeda@epa.gov. For questions regarding the EPA Region 3, please contact Melissa Linden, U.S. EPA, telephone (215) 814-2096, e-mail at linden.melissa@epa.gov. For questions regarding the EPA Region 4, please contact Lynorae Benjamin, U.S. EPA, telephone (404) 562-9040, e-mail at benjamin.lynorae@epa.gov. For questions regarding the EPA Region 5, please contact Andy Chang, U.S. EPA, telephone (312) 886-0258, e-mail at chang.andy@epa.gov. For questions regarding the EPA Region 6, please contact Guy Donaldson, U.S. EPA, telephone (214) 665-7242, e-mail at donaldson.guy@epa.gov. For questions regarding the EPA Region 7, please contact Stephanie Doolan, U.S. EPA, telephone (913) 551-7719, e-mail at doolan.stephanie@epa.gov. For questions regarding the EPA Region 8, please contact Kevin Leone, U.S. EPA, telephone (303) 312-6227, e-mail at leone.kevin@epa.gov. For questions regarding the EPA Region 9, please contact Ginger Vagenas, U.S. EPA, telephone (415) 972-3964, e-mail at vagenas.ginger@epa.gov. For questions regarding the EPA Region 10, please contact Steve Body, U.S. EPA, telephone (206) 553-0782, e-mail at body.steve@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Purpose

The purpose of this notice is to solicit public comments from interested parties

other than states and tribes on the EPA's recent responses to the State and tribal designation recommendations for the 2008 Pb NAAQS. These responses can be found on the EPA's Internet Web site at <http://www.epa.gov/leaddesignations> and also in the public docket for Pb designations at Docket ID No. EPA-HQ-OAR-2009-0443. Clean Air Act (CAA) section 107(d) provides a process for designations that involves recommendations by states and tribes to the EPA and responses from the EPA to those parties, prior to the EPA promulgating final designations and boundaries. The EPA is not required under CAA section 107(d) to seek public comment during the designation process, but is electing to do so for the 2008 Pb NAAQS in order to gather additional information for the EPA to consider before making final designations. The EPA invites public comment on its responses to states and tribes during the 30-day comment period provided in this notice. Due to the statutory timeframe for promulgating designations set out in CAA section 107(d), the EPA will not be able to consider any comments submitted after July 21, 2011. This notice and opportunity for public comment does not affect any rights or obligations of any state, tribe or the EPA which might otherwise exist pursuant to CAA section 107(d).

Please refer to the **ADDRESSES** section in this document for specific instructions on submitting comments and locating relevant public documents.

As required under CAA section 107(d), the EPA has identified five areas as not meeting the 2008 Pb NAAQS and will be designating these areas as nonattainment. The EPA is proposing that all other areas be designated as unclassifiable/attainment. In establishing nonattainment area boundaries, the EPA is required to include any nearby area that is contributing to the area that does not meet that standard. We are particularly interested in receiving comments, supported by relevant information, if you believe that a specific geographic area that the EPA is proposing to identify as a nonattainment area should not be categorized by the CAA section 107(d) criteria as nonattainment, or if you believe that a specific area not proposed by the EPA to be identified as a nonattainment area should in fact be categorized as nonattainment using the CAA section 107(d) criteria. Please be as specific as possible in supporting your views.

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

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

- Explain your views as clearly as possible.

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

II. Instructions for Submitting Public Comments

A. What should I consider as I prepare my comments for the EPA?

1. Submitting Confidential Business Information.

Do not submit this information to the EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be confidential business information. For confidential business information in a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as confidential business information and then identify electronically within the disk or CD-ROM the specific information that is claimed as confidential business information. In addition to one complete version of the comment that includes information claimed as confidential business information, 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. Send or deliver information identified as CBI only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404-02, Research Triangle Park, NC 27711, telephone (919) 541-0880, e-mail at morales.roberto@epa.gov, Attention Docket ID No. OAR-2009-0443.

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

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

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

III. Background

On October 15, 2008, the EPA substantially strengthened the primary NAAQS for Pb to provide increased protection against adverse health effects associated with exposure to Pb in at-risk groups, especially children. The revised primary NAAQS was lowered from the 1.5 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$)

level set in 1978, to a level of 0.15 µg/m³. To provide increased protection against Pb-related welfare effects, the EPA revised the secondary NAAQS to be identical in all respects to the revised primary NAAQS. The EPA also established new criteria for siting ambient Pb monitors and new data collection requirements. The EPA determined that the pre-existing ambient Pb monitoring network was inadequate for determining whether many areas are meeting the revised Pb NAAQS. Monitors meeting the new network siting requirements were to begin operation January 1, 2010.

The process for designating areas following promulgation of a new or revised NAAQS is contained in CAA section 107(d) (42 U.S.C. 7407).

The CAA requires the EPA to complete the initial designation process within 2 years of promulgating a new or revised NAAQS. If the Administrator has insufficient information to make these designations, the EPA has the authority to extend the designation process by up to 1 year. In light of the new monitoring network, the EPA is completing the Pb designations in two rounds. In the first round, published on November 16, 2010, the EPA designated as "nonattainment" 16 areas as violating the 2008 Pb NAAQS based on data from the pre-2010 monitoring network. For all other areas, the EPA extended the deadline for designations by up to 1 year so that data from the newly deployed monitors can be considered in making appropriate designation decisions. States previously submitted air quality recommendations including appropriate boundaries within 1 year of promulgation of the NAAQS (tribes are not required to submit recommendations, but the EPA encourages their participation in the designations process), as required by the CAA. They were given an opportunity to update their recommendation letters for those remaining areas for our consideration in the second round of designations by December 15, 2010. By no later than 120 days prior to promulgating designations, the EPA is required to notify states or tribes of any intended modification to an area designation or boundary recommendation that the EPA deems necessary. On or about June 15, 2011, the EPA notified states and tribes of its intended area designations for the 2008 Pb NAAQS. States and tribes now have an opportunity to demonstrate why they believe a modification proposed by the EPA may be inappropriate. In these responses, the EPA has encouraged states and tribes to provide comments and additional information for

consideration by the EPA in finalizing designations. The EPA intends to make final designation determinations for the 2008 Pb NAAQS by October 14, 2011.

IV. Internet Web Site for Rulemaking Information

The EPA has also established a Web site for this rulemaking at <http://www.epa.gov/leaddesignations>. The Web site includes the EPA's State and tribal designation recommendations, information supporting the EPA's preliminary designation decisions, as well as the rulemaking actions and other related information that the public may find useful.

Dated: June 15, 2011.

Mary Eileen Henigin,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2011-15415 Filed 6-20-11; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA-2011-0002; Internal Agency Docket No. FEMA-B-1197]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before September 19, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1197, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064, or (e-mail) luis.rodriguez1@dhs.gov.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064, or (e-mail) luis.rodriguez1@dhs.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility

Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Kane County, Illinois, and Incorporated Areas				
Big Rock Creek	Approximately 1.68 miles downstream of Jericho Road (at the Kendall County boundary).	None	+648	Unincorporated Areas of Kane County, Village of Big Rock.
	Approximately 1.0 mile upstream of Price Road (at the West Branch Big Rock Creek and East Branch Big Rock Creek confluence).	None	+689	
Duffin Drain	At the Sugar Grove Branch confluence	None	+678	Unincorporated Areas of Kane County, Village of Big Rock, Village of Sugar Grove.
East Branch Big Rock Creek	At the downstream side of Wheeler Road	None	+702	
	At the Big Rock Creek confluence	None	+689	
East Branch Big Rock Creek	At the Malgren Drain confluence	None	+709	Unincorporated Areas of Kane County, Village of Big Rock.
	At the upstream side of Owens Road	None	+779	
East Branch Big Rock Creek Tributary 2.	At the East Branch Big Rock Creek Tributary 2 confluence.	None	+810	Unincorporated Areas of Kane County.
	At the East Branch Big Rock Creek confluence	None	+810	
Malgren Drain	Approximately 0.47 miles upstream of Keslinger Road	None	+846	Unincorporated Areas of Kane County, Village of Big Rock.
	At the East Branch Big Rock Creek confluence	None	+709	
Sugar Grove Branch	At the downstream side of Swan Road	None	+741	Unincorporated Areas of Kane County.
	At the Welch Creek confluence	None	+677	
Welch Creek	Approximately 1,150 feet downstream of Fay's Lane ..	None	+680	Unincorporated Areas of Kane County, Village of Big Rock, Village of Sugar Grove.
	At the Big Rock Creek confluence	None	+665	
West Branch Big Rock Creek	At the downstream side of Keslinger Road	None	+813	Unincorporated Areas of Kane County.
	At the Big Rock Creek confluence	None	+689	
	At the downstream side of U.S. Route 30	None	+720	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Kane County

Maps are available for inspection at the Kane County Government Center, Building A, 719 Batavia Avenue, Geneva, IL 60134.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Village of Big Rock

Maps are available for inspection at the Village Hall, 408 Rhodes Street, Big Rock, IL 60511.

Village of Sugar Grove

Maps are available for inspection at the Village Hall, 10 Municipal Drive, Sugar Grove, IL 60554.

Osceola County, Michigan (All Jurisdictions)

Hersey River	Approximately 125 feet upstream of the Muskegon River confluence.	+960	+961	Township of Hersey, Village of Hersey.
	Approximately 750 feet upstream of the Muskegon River confluence.	+960	+961	
Muskegon River	Approximately 1,500 feet downstream of 4th Street	None	+959	Township of Hersey.
	Approximately 1,565 feet upstream of 4th Street	None	+962	
Muskegon River	At the upstream side of Main Street	None	+992	Township of Evart.
	Approximately 0.4 miles upstream of Main Street	None	+993	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Township of Evart

Maps are available for inspection at the Township Hall, 327 South Main Street, Evart, MI 49631.

Township of Hersey

Maps are available for inspection at the Township Hall, 108 South Main Street, Hersey, MI 49639.

Village of Hersey

Maps are available for inspection at the Hersey Township Hall, 108 South Main Street, Hersey, MI 49639.

Laurens County, South Carolina, and Incorporated Areas

Beards Creek	Approximately 170 feet downstream of Little Acres Road.	None	+447	City of Clinton, Unincorporated Areas of Laurens County.
Burnt Mill Creek	Approximately 490 feet upstream of Brook Road	None	+564	Unincorporated Areas of Laurens County.
	At the Little River confluence	None	+501	
Burnt Mill Creek Tributary 16	Approximately 1,750 feet upstream of State Route 127.	None	+558	City of Laurens, Unincorporated Areas of Laurens County.
	At the Burnt Mill Creek confluence	None	+583	
Burnt Mill Creek Tributary 21	Approximately 1.0 mile upstream of the Burnt Mill Creek confluence.	None	+658	Unincorporated Areas of Laurens County.
	At the Burnt Mill Creek confluence	None	+586	
Burnt Mill Creek Tributary 5 ..	Approximately 1,735 feet upstream of Strickland Avenue.	None	+620	Unincorporated Areas of Laurens County.
	Approximately 0.5 mile downstream of Roper Road ...	None	+514	
Burnt Mill Creek Tributary 9 ..	Approximately 1.9 miles upstream of Roper Road	None	+596	Unincorporated Areas of Laurens County.
	At the Burnt Mill Creek confluence	None	+530	
Burnt Mill Creek Tributary 9.2.2	Approximately 1.4 miles upstream of Easy Road	None	+637	Unincorporated Areas of Laurens County.
	At the Burnt Mill Creek Tributary 9 confluence	None	+582	
Bush River	Approximately 1.0 mile upstream of the Burnt Mill Creek Tributary 9 confluence.	None	+632	City of Clinton, Unincorporated Areas of Laurens County.
	At the downstream side of State Route 560	None	+509	
	Approximately 1.9 miles upstream of State Route 72	None	+629	

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) #Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Cane Creek	Approximately 2.2 miles downstream of State Route 72.	None	+442	Unincorporated Areas of Laurens County.
	Approximately 3.8 miles upstream of Harris Springs Road.	None	+529	
Lake Greenwood	Entire shoreline within community	None	+442	Unincorporated Areas of Laurens County.
Little River	Approximately 1,075 feet upstream of Holmes Bridge Road.	None	+496	City of Laurens, Unincorporated Areas of Laurens County.
	Approximately 1.0 mile upstream of Ghost Creek Road.	None	+606	
Little River Tributary 1	At the Little River confluence	+545	+542	Unincorporated Areas of Laurens County.
	Approximately 1,850 feet upstream of the Little River confluence.	+545	+544	
Little River Tributary 2	At the Little River confluence	+555	+551	City of Laurens.
	Approximately 495 feet upstream of River Street	+555	+554	
Little River Tributary 25	At the Little River confluence	None	+508	Unincorporated Areas of Laurens County.
	Approximately 1.0 mile upstream of the Little River confluence.	None	+537	
Little River Tributary 28	At the Little River confluence	None	+519	Unincorporated Areas of Laurens County.
	Approximately 0.8 mile upstream of the Little River confluence.	None	+540	
Little River Tributary 3	At the Little River confluence	+568	+563	City of Laurens.
	Approximately 0.5 mile upstream of the Little River confluence.	+568	+567	
Little River Tributary 31	At the Little River confluence	None	+530	Unincorporated Areas of Laurens County.
	Approximately 0.8 mile upstream of East Jerry Road	None	+547	
Little River Tributary 37	At the Little River confluence	None	+544	City of Laurens.
	Approximately 1,190 feet upstream of East Farley Avenue.	None	+609	
Reedy Fork Creek	At the Little River confluence	+565	+558	City of Laurens.
	Approximately 715 feet downstream of Anderson Drive.	+571	+570	
Saluda River	Approximately 3.9 miles downstream of U.S. Route 25.	None	+448	Unincorporated Areas of Laurens County.
	Approximately 230 feet upstream of U.S. Business Route 25.	None	+531	
Scout Branch	Approximately 310 feet upstream of Pamela Lane	None	+641	City of Laurens.
	Approximately 0.6 mile upstream of Pamela Lane	None	+670	
Shell Creek	Approximately 1,330 feet upstream of the Bush River confluence.	None	+541	City of Clinton, Unincorporated Areas of Laurens County.
	Approximately 1,060 feet upstream of Springdale Drive.	None	+607	
South Durbin Creek	Approximately 1,500 feet downstream of Boyd Street	None	+743	Unincorporated Areas of Laurens County.
	Approximately 675 feet downstream of Boyd Street ...	None	+749	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Clinton

Maps are available for inspection at City Hall, 211 North Broad Street, Clinton, SC 29325.

City of Laurens

Maps are available for inspection at City Hall, 126 East Public Square, Laurens, SC 29360.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Unincorporated Areas of Laurens County

Maps are available for inspection at the Laurens County Courthouse, 3 Catherine Street, Laurens, SC 29360.

Pennington County, South Dakota, and Incorporated Areas

Arrowhead Creek	At the Rapid Creek confluence	+3317	+3318	City of Rapid City.
Box Elder Creek through Box Elder.	Approximately 408 feet upstream of Summerset Drive	None	+3490	City of Box Elder, Unincorporated Areas of Pennington County.
	Approximately 0.8 mile downstream of 151st Avenue	None	+2994	
Box Elder Creek through Box Elder Overflow.	At the downstream side of 146th Avenue (Bennett Road).	None	+3085	City of Box Elder, Unincorporated Areas of Pennington County.
	At the Box Elder Creek confluence	None	+3039	
East Tributary to Box Elder Creek.	At the Box Elder Creek divergence	None	+3082	City of Box Elder, Unincorporated Areas of Pennington County.
	At the North Tributary to Box Elder Creek confluence	None	+2998	
Ellsworth AFB Alert Apron Drainage.	Approximately 515 feet upstream of G Avenue	None	+3168	City of Box Elder, Unincorporated Areas of Pennington County.
	At the Box Elder Creek through Box Elder Overflow confluence.	None	+3056	
Ellsworth AFB West Drainage Basin.	Approximately 1.0 mile upstream of Kenney Road	None	+3186	City of Box Elder, Unincorporated Areas of Pennington County.
	At the Box Elder Creek through Box Elder Overflow confluence.	None	+3071	
Haines Avenue Drainage Basin.	At the downstream side of 225th Street	None	+3156	City of Rapid City.
	At the Rapid Creek confluence	None	+3213	
Meade-Hawthorne Drainage Basin.	Approximately 340 feet upstream of Curtis Street	None	+3285	City of Rapid City.
	At the Rapid Creek confluence	None	+3141	
North Tributary to Box Elder Creek.	At the downstream side of Saint Anne Street	None	+3236	City of Box Elder, Unincorporated Areas of Pennington County.
	At the Box Elder Creek confluence	+2999	+2994	
Northwest Tributary to Box Elder Creek.	Approximately 540 feet upstream of 225th Street	None	+3117	City of Box Elder, Unincorporated Areas of Pennington County.
	At the North Tributary to Box Elder Creek confluence	+3047	+3045	
Rapid Creek through Silver City.	Approximately 280 feet upstream of 225th Street	None	+3255	Unincorporated Areas of Pennington County.
	At the Pactola Reservoir confluence	None	+4593	
Red Rock Canyon	Approximately 2.7 miles upstream of the Pactola Reservoir confluence.	None	+4667	City of Rapid City, Unincorporated Areas of Pennington County.
	At the Rapid Creek confluence	+3378	+3375	
Robinsdale Drain	Approximately 1.0 mile upstream of Red Rock Canyon Road.	None	+3545	City of Rapid City.
	At the Southeast Drainage Basin confluence	+3170	+3172	
South Canyon Creek	Approximately 220 feet upstream of 5th Street	None	+3340	City of Rapid City, Unincorporated Areas of Pennington County.
	At the Lime Creek confluence	None	+3334	
Southeast Drainage Basin	Approximately 1,030 feet upstream of Nemo Road	None	+3571	City of Rapid City, Unincorporated Areas of Pennington County.
	At the Rapid Creek confluence	None	+3133	
Tributary 1 to East Tributary to Box Elder Creek.	Approximately 1,180 feet upstream of Old Folsom Road.	None	+3223	City of Box Elder.
	At the East Tributary to Box Elder Creek confluence ..	None	+3077	
	Approximately 0.5 mile upstream of the East Tributary to Box Elder Creek confluence.	None	+3153	

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Truck Bypass	At the Southeast Drainage Basin confluence	None	+3213	City of Rapid City, Unincorporated Areas of Pennington County.
	Approximately 1,870 feet upstream of State Highway 16.	None	+3310	
West Tributary to Box Elder Creek.	At the East Tributary to Box Elder Creek confluence ..	+3026	+3025	City of Box Elder, Unincorporated Areas of Pennington County.
	Approximately 700 feet upstream of Kenney Road	None	+3130	

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Box Elder

Maps are available for inspection at 520 North Ellsworth Road, Suite 9C, Box Elder, SD 57719.

City of Rapid City

Maps are available for inspection at 300 6th Street, Rapid City, SD 57701.

Unincorporated Areas of Pennington County

Maps are available for inspection at 832 Saint Joseph Street, Rapid City, SD 57701.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: June 10, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011-15317 Filed 6-20-11; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2011-0036; MO 92210-0-0008]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Utah Population of the Gila Monster as an Endangered or a Threatened Distinct Population Segment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of a 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a

90-day finding on a petition to list the Utah population of the Gila monster (*Heloderma suspectum*) as an endangered or a threatened distinct population segment (DPS) under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. Based on our review, we find that the petition does not present substantial information indicating that listing the Utah population of the Gila monster may be warranted, because the population does not constitute a DPS, and is therefore not a listable entity under the Act. Therefore, we are not initiating a status review in response to this petition. However, we ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the Gila monster or its habitat at any time.

DATES: The finding announced in this document was made on June 21, 2011.

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov> at Docket Number [FWS-R6-ES-2011-0036]. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Utah Ecological

Services Office, 2369 West Orton Circle, Suite 50, West Valley City, UT 84119. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT:

Larry Crist, Field Supervisor, Utah Ecological Services Office (see **ADDRESSES**), by telephone (801-975-3330) or by facsimile (801-975-3331). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of

the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is “that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted” (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On January 27, 2010, we received a petition, dated January 22, 2010, from WildEarth Guardians and Daniel Beck, requesting that the Utah population of the Gila monster (*Heloderma suspectum*) be listed as threatened or endangered under the Act and critical habitat be designated. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a). In an April 5, 2010, letter to the petitioners, we responded that we had reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also stated that due to previously received petitions, court orders, other listing actions with statutory deadlines, and judicially approved settlement agreements, we anticipated responding to the petition in Fiscal Year 2011. On May 20, 2010, WildEarth Guardians filed a notice of intent to sue regarding our failure to complete a 90-day finding concerning their January 22, 2010, petition. In a June 23, 2010, letter to the petitioners, we responded that our funding and work activities prevented us from completing the finding within 90 days; however, we had begun review of the petition. On October 25, 2010, WildEarth Guardians filed a complaint regarding our failure to complete a 90-day finding concerning their January 22, 2010, petition. At this time, that case is stayed, pending final action by the United States Judicial Panel on Multidistrict Litigation on a notice of Tag-Along Actions filed on December 7, 2010. In Fiscal Year 2011, funding was made available to complete this 90-day finding. This finding addresses the petition.

Previous Federal Actions

The Gila monster was included as a category 2 candidate species in **Federal**

Register notices dated December 30, 1982 (47 FR 58454), September 18, 1985 (50 FR 37958), and November 15, 1994 (59 FR 58982). Category 2 candidates were taxa for which information was available indicating that listing was possibly appropriate, but insufficient data were available regarding biological vulnerability and threats. In the February 28, 1996, Notice of Review (61 FR 7595), we discontinued the use of multiple candidate categories and removed category 2 species from the candidate list, which removed the Gila monster from the candidate species list.

Species Information

Taxonomy

The Gila monster is a reptile in the family Helodermatidae, which contains only one extant genus, *Heloderma*. The closest living relative of *Heloderma* is the genus *Varanus* (monitor lizards) (Pregill *et al.* 1986, p. 167; Beck 2005, p. 17). Within *Heloderma*, there are two surviving species, both of which are venomous—the Gila monster (*H. suspectum*) and the beaded lizard (*H. horridum*) (Bogert and Del Campo 1956, pp. 9, 139–140; NatureServe 2009, p. 1). The genus *Heloderma* has existed for at least 23 million years and during this time has undergone relatively little morphological change (Beaman *et al.* 2006, p. 1). The Gila monster was first described by Baird in 1859 in Pima County, Arizona, near the Mexican border, but was not identified as a new species until 1869 by Cope (Bogert and Del Campo 1956, p. 9). Two potential subspecies of Gila monster have been described based upon differing color patterns: The banded Gila monster (*H. s. cinctum*) in the northern portion of the species' range and the reticulate Gila monster (*H. s. suspectum*) in the southern portion of the species' range (Beck 2005, pp. 26–27). However, recent analysis of mitochondrial and nuclear DNA does not support subspecific categories for the Gila monster (Douglas *et al.* 2010, pp. 159, 163). Nevertheless, the taxonomic status at the species level is valid (Douglas *et al.* 2010, p. 153; Integrated Taxonomic Information System 2011, p. 1). Therefore, we considered the petition in light of whether the petitioned DPS constitutes a DPS of the valid species *H. suspectum*, rather than of the banded Gila monster, *H. s. cinctum*.

Physical Description

The Gila monster is the largest native species of lizard in the United States (Sullivan *et al.* 2004, p. 236). Adults typically have a body length of 12 to 14 inches (in) (300 to 360 millimeters

(mm)), not including the tail (Beck 2005, p. 26). The tail adds an additional 6 to 7 in. (150 to 180 mm) (Bogert and Del Campo 1956, p. 17). Their average body mass is slightly more than 1 pound (lb) (500 grams (g)) (Beck 2005, p. 26). They have distinctive rounded, beadlike bony deposits on the back of their head, limbs, body, and tail (Beck 2005, p. 26). The Gila monster's coloration is a pattern of typically four or five black bands alternating with a pale yellow or orange background on the body, and four or five additional black bands on the tail (Beck 2005, p. 26). They have massive skulls, venom glands in the lower jaw, and a dark, forked tongue (Beck 2005, p. 18).

Life History

Gila monsters are slow-moving lizards with a specialized feeding niche that depends almost solely on vertebrate eggs and young in nests (Beck 1990, p. 54; Beaman *et al.* 2006, p. 1). In Utah, their diet consists primarily of infant cottontail rabbits (*Sylvilagus audubonii*) and desert tortoise (*Gopherus agassizi*) eggs (Beck 1990, p. 55). Gila monsters can ingest large quantities of prey (up to one-third of their body weight) during a single feeding; consequently, as few as three large meals can supply the yearly energy demands of an adult (Beck 1990, pp. 56, 63–64). They also can store large deposits of fat in their tail and within their body cavity (McLuckie *et al.* 2007, p. 6). This ability to consume large meals, combined with their low energy demands while inactive, makes it unnecessary for Gila monsters to frequently search for food (Beck 1990, p. 54). Gila monsters in Utah and elsewhere throughout their range may spend more than 95 percent of their time in underground shelters, with peak surface activity from late April to mid June (Beck 1990, p. 54; Beck 2005, p. 92).

Gila monsters do not appear to inject venom into their prey; they most likely use their venomous bite as a defense mechanism (Beck 1990, p. 56; Beaman *et al.* 2006, p. 1). Although incidental to this evaluation, it is noteworthy that several of the amino acid peptides found in the venom of Gila monsters have valuable research and pharmacological applications, including the treatment of Type 2 diabetes and possibly memory disorders, such as Alzheimer's disease (Beck 2005, pp. 52–53).

Male Gila monsters fight for dominance in spring and early summer during the mating season (Beck 2005, pp. 140–141). During these combat bouts, which may last for hours, males use their heads in attempts to gain or

maintain a superior position (Gienger and Beck 2007, p. 92). As with other species, the winner has more opportunities to mate with receptive females. After mating, during July and August, females lay four to seven eggs (Bogert and Del Campo 1956, p. 118; Beck 2005, p. 147). Hatchlings do not emerge from the nest until nearly a year later (Beck 2005, p. 147). It is not known whether incubation is actually 8 to 10 months, or if hatchlings remain in the nest through winter. The incubation schedule may depend upon temperature, with development possibly delayed by lower temperatures (Beck 2005, p. 147). Individuals typically reach sexual maturity at 3 to 4 years of age (McLuckie *et al.* 2007, p. 5). Adult Gila monsters in one population in Arizona had a mean life expectancy of 7.4 years (Beck 2005, p. 113). However, their lifespan can frequently exceed 20 years in the wild (Beck 2005, p. 113).

Habitat

Rangewide, the Gila monster may be found from elevations near sea level up to 5,600 feet (ft) (1,738 meters (m)) (Beck 2005, p. 26). The Gila monster appears to be limited to habitat that receives more than 25 percent of its annual precipitation during the summer (Beck 2005, p. 29). The size of the species' home range is 15 to 363 acres (ac) (6 to 147 hectares (ha)), while three home ranges in Utah measured from 15 to 163 ac (6 to 66 ha) (Beck 2005, p. 91). The availability and quality of suitable shelters affect habitat selection (Beck 2005, p. 91). In Utah, Gila monsters favor rocky slopes, washes, and sandy valleys at the base of sandstone bluffs (Beck 2005, p. 29). Dominant vegetation in the species' habitat in Utah includes *Larrea tridentata* (creosote bush), *Artemisia filifolia* (sand sage), and *Coleogyne ramosissima* (blackbrush) (Beck 1990, p. 55).

Distribution, Abundance, and Trends

The Gila monster occurs in portions of the Mohave Desert in southwestern Utah, southeastern Nevada, southeastern California, and northwestern Arizona; in the Sonoran Desert in southwestern Arizona and Sonora, Mexico; and in small portions of the Chihuahuan Desert in southeastern Arizona and southwestern New Mexico (Beck 2005, p. 26). Its range throughout the United States and Mexico encompasses approximately 80,000 to 1,000,000 square miles (mi) (200,000 to 2,500,000 square kilometers (km)) (NatureServe 2009, p. 5). In Utah, it is found only in Washington County (Beck 2005, p. 29), which comprises less than 1 percent of the species' total

range. Important habitat for the Gila monster occurs in the southern portion of Washington County, including Red Cliffs Desert Reserve; Webb Hill; Smoot's Hill; the locale including Stone Cliff, Bloomington West, and Stucki Springs; the locale including Fort Pierce Wash, Warner Ridge, and Sand Mountain; and Beaver Dam Slope (McLuckie *et al.* 2007, p. 23).

As stated previously, Gila monsters spend much of their time underground and are difficult to accurately count. The current total population size is unknown, but there are probably at least several thousand adult Gila monsters rangewide (International Union for Conservation of Nature 2010, p. 2). The species is ranked by NatureServe as "apparently secure" rangewide, but "critically imperiled" in Utah (NatureServe 2009, pp. 1–2). In the late 1970s and early 1980s, there were 20 to 25 Gila monsters per square mi (8 to 10 per square km) near St. George, Utah. Recent development has likely decreased that density (Beck 2005, p. 115); however, we have no information concerning the current density.

Gila monster populations are declining over most of their range in the United States, but the rate of decline is probably less than 30 percent over three generations (International Union for Conservation of Nature 2010, p. 2). In Utah, the species is uncommon, and its current population trend is suspected to be declining (McLuckie *et al.* 2007, p. 4). There were possibly 2,000 to 5,000 Gila monsters in Utah prior to the 1930s and 450 to 800 individuals in 1985 (Beck 1985 *in* NatureServe 2009, p. 2).

Evaluation of the Utah Population of the Gila Monster as a Distinct Population Segment

The petitioners requested that we list the Utah population of the Gila monster as a DPS. To interpret and implement the DPS provisions of the Act, the Service and the National Oceanic and Atmospheric Administration published the Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act in the **Federal Register** on February 7, 1996 (61 FR 4722). Under the DPS Policy, three elements are considered in the decision regarding the establishment and classification of a population of a vertebrate species as a possible DPS: (1) The discreteness of a population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing, delisting, or

reclassification. Both discreteness and significance are used to determine whether the population segment constitutes a valid DPS. If it does, then the population segment's conservation status is used to consider whether that DPS warrants listing. We address these elements with respect to the Gila monster in Utah.

Discreteness

Under the DPS policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

Markedly Separated

Information Provided in the Petition

The petitioners assert that the Utah population of the Gila monster is markedly separated from other populations throughout its range due to geographic isolation as well as ecological, physiological and behavioral factors. The petitioners assert that in Washington County, Utah, the Virgin River Gorge and the Beaver Dam Mountains to the southwest and the Pine Valley Mountains to the north separate the Utah population from the rest of the species.

The petitioners also assert that Gila monster populations in the Mohave Desert of Utah show physiological, ecological, and behavioral differences due to the difference in precipitation patterns between the Mohave and Sonoran Deserts. They assert that there is a difference in aboveground activity between populations in the Mohave and Sonoran Deserts, since Gila monsters in the Mohave Desert typically spend less time above ground during late summer due to the absence of July and August monsoons. Finally, they also describe a relatively high rate of cutaneous water loss (water loss through the skin) specifically for the Gila monster compared to that of other lizards from arid environments.

Evaluation of Information Provided in the Petition and Available in Service Files

We agree that the Virgin River Gorge and Beaver Dam Mountains may present physical barriers within portions of Washington County, Utah. However, Gila monster populations occur in Washington County on either side of the Beaver Dam Mountains near the border with Nevada and Arizona, as well as on either side of the Virgin River Gorge and Interstate 15 near the Arizona border (McLuckie *et al.* 2007, p. 23); therefore, information provided by the petitioners and readily available in our files does not support the assertion that these physical barriers may isolate the Utah population from populations of Gila monsters in other States. The petition contains both a rangewide map and a Washington County map, both of which indicate a patchy but nevertheless contiguous population of Gila monsters between Utah and the adjoining States of Arizona and Nevada (WildEarth Guardians and Beck 2010, pp. 7–8). There are no intervening barriers between these populations. We conclude that the Pine Valley Mountains are not relevant to the discreteness analysis, because there are no Gila monster populations in Utah north of the Pine Valley Mountains. Therefore, we find that the petitioners do not present substantial information indicating that the Gila monster in Utah may be markedly separated from other Gila monster populations in the remainder of its range as a consequence of physical factors.

Regarding the petitioners' claims concerning differences in aboveground activity between Gila monster populations in the Mohave and Sonoran Deserts, we find that this claim is irrelevant to the issue of discreteness of the Utah population based upon physiological, ecological, and behavioral differences because the boundary of the Mohave Desert does not correspond with the boundaries of the petitioned DPS. The Mohave Desert extends beyond southwestern Utah into portions of southeastern Nevada, southeastern California, and northwestern Arizona. Gila monsters are found in suitable habitat throughout the Mohave Desert in each of these States (Beck 2005, p. 26; Douglas *et al.* 2010, p. 154). Any differences between Gila monsters in the Mohave and Sonoran Deserts would not be unique to the Utah population. Therefore, we find that the petitioner did not present substantial information indicating that differences in aboveground activity between the Mohave and Sonoran Deserts may result

in discreteness of the petitioned DPS in Utah from the remainder of the range of the taxon.

In conducting their analysis, the petitioners appear to have used the incorrect standard when asserting that the Utah population of the Gila monster constitutes a valid DPS on the basis of physiological differences due to its high rate of cutaneous water loss. The petitioners present information comparing the rate of cutaneous water loss between Gila monsters and other species of lizard. However, our DPS policy requires that a population be markedly separated from other populations of the same taxon (in this case, *Heloderma suspectum*) as a consequence of physical, physiological, ecological, or behavioral factors. The high degree of cutaneous water loss is apparently characteristic of the Gila monster throughout its range (DeNardo *et al.* 2004, pp. 950–951), and is not unique to the Utah population. Therefore, the Gila monster in Utah is not markedly separated from other Gila monster populations due to a physiological difference in the rate of cutaneous water loss.

International Boundaries With Differences in Exploitation, Management, Status, or Regulations

Although the Gila monster also occurs in Mexico, the DPS proposed by the petitioners occurs solely within the United States. Therefore, there are no international governmental boundaries to consider.

Conclusion

The Gila monster has a patchy but contiguous distribution from Utah into the adjoining States of Arizona and Nevada. The portion of the species' range within the Mohave Desert includes southwestern Utah, southeastern Nevada, southeastern California, and northwestern Arizona. Since it is neither geographically isolated nor physiologically, ecologically, or behaviorally different from other Gila monsters in the Mojave Desert, the Utah population is not markedly separated from other populations. Additionally, there are no international boundaries adjacent to the Utah population. Therefore, we find that the petitioner did not present substantial information indicating that the discreteness criteria of our DPS policy have been met.

Significance

Under the DPS policy, a discrete population segment of a vertebrate species may be considered significant if there is: (1) Persistence of the discrete

population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

We concluded in the previous section that the Utah population of the Gila monster did not meet the discreteness criteria. Therefore, we do not need to evaluate the significance criteria. However, while it is not our normal practice, we would like to respond to the petitioners' assertion that the Utah population of the Gila monster is significant because of its unique ecological setting in Jurassic Navajo sandstone and Holocene basaltic lava flows.

We agree that the geology of Washington County, Utah, is unusual, but the geological setting does not equate to the ecological setting. We consider the ecological setting to be the sum of all biotic and abiotic components in a given environment. It encompasses not only geology, but also other components such as climate, plant life, and resident wildlife. We consider the ecological setting of the Utah population of Gila monsters to be the Mohave Desert. As previously noted, the Mohave Desert extends beyond southwestern Utah into portions of southeastern Nevada, southeastern California, and northwestern Arizona. Therefore, we find that the petitioner did not present substantial information indicating that Utah may constitute a unique ecological setting for the Gila monster, because the same setting exists in the Mohave Desert in three other States.

Although the petitioner presented information on only one of the four significance criteria, we also note that none of the other significance criteria were met. As previously stated, the portion of the species' range in Utah is less than 1 percent of the species' total range throughout the United States and Mexico. Therefore, loss of the Utah population would not result in a significant gap in the range of the taxon. The Utah population does not represent the only surviving natural occurrence of the taxon. Lastly, the Utah population does not differ markedly from other populations with respect to genetic characteristics (Douglas *et al.* 2010, pp. 154–159). Therefore, the significance

criteria of our DPS policy have not been met.

Conservation Status

As stated previously, we determined that the Utah population of the Gila monster does not meet the discreteness criteria or the significance criteria. Therefore, the Utah population does not constitute a valid DPS. As such, we do not need to evaluate whether the information contained in the petition regarding the conservation status in relation to the Act's standards for listing is substantial.

Finding

In summary, the petition does not present substantial information supporting the characterization of the Utah population of the Gila monster as a DPS, because the discreteness and significance criteria were not met. Therefore, this population is not a valid listable entity under section 3(16) of the Act.

On the basis of our determination under section 4(b)(3)(A) of the Act, we conclude that the petition does not present substantial scientific or commercial information to indicate that listing the Utah population of the Gila monster as a DPS as threatened or endangered under the Act may be warranted at this time. Although we will not review the status of the species at this time, we encourage interested parties to continue to gather data that will assist with conservation of the Gila monster. If you wish to provide information regarding the Gila monster, you may submit your information or materials to the Utah Field Supervisor (see **ADDRESSES**) at any time.

References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Utah Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are staff members of the Mountain-Prairie Regional Office and the Utah Field Office (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 8, 2011.

Gregory E. Siekaniec,
Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011-15399 Filed 6-20-11; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2011-0037]

Endangered and Threatened Wildlife and Plants; Revised 90-Day Finding on a Petition To Reclassify the Utah Prairie Dog From Threatened to Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of revised 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a revised 90-day finding on a petition to reclassify the Utah prairie dog (*Cynomys parvidens*) from threatened to endangered under the Endangered Species Act of 1973, as amended (Act). As we concluded in our 90-day finding published on February 21, 2007, we find that the February 3, 2003, petition does not present substantial information indicating that reclassifying the Utah prairie dog from threatened to endangered may be warranted. Therefore, we are not initiating a status review in response to the February 3, 2003, petition. However, we ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the Utah prairie dog or its habitat at any time.

DATES: The revised 90-day finding announced in this document was made on June 21, 2011.

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R6-ES-2011-0037. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, 2369 West Orton Circle, Suite 50, West Valley City, UT 84119. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, Utah Ecological Services Field Office (see **ADDRESSES**), by telephone (801-975-3330), or by facsimile (801-975-3331). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

In making this finding, we applied the standards described above for substantial information. Under the Act, a threatened species is defined as a species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. An endangered species is defined as a species which is in danger of extinction throughout all or a significant portion of its range. Therefore, in evaluating the information in this petition to reclassify the Utah prairie dog from threatened to endangered, we have based our determination on whether the petition presents substantial scientific and commercial information indicating that the species may be currently in danger of extinction throughout all or a significant portion of its range.

Petition History

On February 3, 2003, we received a petition, dated the same day, from Forest Guardians, Center for Native Ecosystems, Escalante Wilderness Project, Boulder Regional Group, Southern Utah Wilderness Alliance, and Terry Tempest Williams (Petitioners) requesting that the Utah prairie dog be reclassified as endangered under the Act (Forest Guardians *et al.* 2003, entire). The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR

424.14(a). We acknowledged receipt of the petition in a letter to Nicole Rosmarino on November 21, 2003. In that letter we also advised the Petitioners that, due to prior listing allocations in Fiscal Years 2003 and 2004, we would not be able to begin processing the petition in a timely manner. On February 2, 2004, we received a Notice of Intent to sue from the Petitioners for failure to issue the 90-day finding.

On February 2, 2006, the Petitioners filed a complaint for injunctive and declaratory relief in the United States District Court for the District of Columbia. On June 2, 2006, the parties reached a settlement that required the Service to make a 90-day finding on the February 3, 2003, petition on or before February 17, 2007. The 90-day finding published on February 21, 2007 (72 FR 7843), constituted our compliance with the settlement agreement. We found that the petition did not provide substantial scientific or commercial information indicating that reclassification may be warranted. This decision was challenged by WildEarth Guardians in litigation.

On September 28, 2010, the United States District Court for the District of Columbia vacated and remanded our February 21, 2007, not-substantial 90-day finding (72 FR 7843) back to us for further consideration (*WildEarth Guardians v. Salazar*, Case 1:08-cv-01596-CKK (D.D.C. 2010)). We were directed to address cumulative effects and to consider whether the loss of historical range constituted a significant portion of the species' range. We have considered both of these remanded items in our Findings section below. Additionally, because the finding was remanded by the Court, we considered the petition as resubmitted at the time of the Court's order and now evaluate the information submitted in the petition and the information in Service files as of the remanded date (September 28, 2010). We considered whether this current data affect our original 2007 decision that the petition did not present substantial information indicating that reclassification may be warranted. Although we supplemented our revised 90-day finding with new information since our 2007 90-day finding, our evaluation continues to support a "not substantial" determination. This revised 90-day finding constitutes our compliance with the District Court's order dated September 28, 2010 (*WildEarth Guardians v. Salazar*, Case 1:08-cv-01596-CKK (D.D.C. 2010)).

Previous Federal Actions

We listed the Utah prairie dog as an endangered species on June 4, 1973 (38 FR 14678), pursuant to the Endangered Species Conservation Act of 1969 (the predecessor to the 1973 Act). On November 5, 1979, the Utah Division of Wildlife Resources (UDWR) petitioned the Service to remove the Utah prairie dog from the List of Endangered and Threatened Wildlife. Based on information provided in the petition, the species was reclassified from endangered to threatened on May 29, 1984 (49 FR 22330).

Species Information

We have updated this information since our February 21, 2007, 90-day finding, based on the best information currently available in our files. We determined that updating the basic biological information for the species with information contained in our files has no effect on our decision as to whether or not the petition contains substantial information.

Taxonomy

Prairie dogs belong to the Sciuridae family of rodents, which also includes squirrels, chipmunks, and marmots. There are five species of prairie dogs, all of which are native to North America, and all of which have non-overlapping geographic ranges (Hoogland 2003, p. 232). Taxonomically, prairie dogs (*Cynomys spp.*) are divided into two subgenera (Hoogland 1995, p. 8): the white-tail and the black-tail. The Utah prairie dog (*C. parvidens*) is a member of the white-tailed group, subgenus *Leucocrossuromys*. Other members of this group, which also occur in Utah, are the white-tailed prairie dog (*C. leucurus*) and the Gunnison prairie dog (*C. gunnisoni*).

The Utah prairie dog is recognized as a distinct species (Zaveloff 1988, p. 148; Hoogland 1995, p. 10), but is most closely related to the white-tailed prairie dog. These two species may have once belonged to a single interbreeding species (Pizzimenti 1975, p. 16), but are now separated by ecological and physiographic barriers. We accept the characterization of the Utah prairie dog as a distinct species because of these ecological and physiographic barriers from other prairie dog species (Zaveloff 1988, p. 148).

Species Description

The Utah prairie dog is the smallest species of prairie dog; individuals are typically 250 to 400 millimeters (mm) (10 to 16 inches (in.)) long (Hoogland 1995, p. 8)). Weight ranges from 300 to 900 grams (g) (0.66 to 2.0 pounds (lb))

in the spring and 500 to 1,500 g (1.1 to 3.3 lb) in the late summer and early fall (Hoogland 1995, p. 8). Utah prairie dogs range in color from cinnamon to clay. The Utah prairie dog is distinguishable from other prairie dog species by a relatively short (30 to 70 mm (1.2 to 2.8 in.)) white- or gray-tipped tail and a black "eyebrow" above each eye (Pizzimenti and Collier 1975, p. 1; Hoogland 2003, p. 232).

Life History

Utah prairie dogs hibernate for 4 to 6 months underground each year during the harsh winter months, although they are occasionally seen above ground during mild weather (Hoogland 2001, p. 918). Adult males cease surface activity during August and September, and females follow suit several weeks later (Hoogland 2003, p. 235). Juvenile prairie dogs remain above ground 1 to 2 months longer than adults and usually hibernate by late November. Emergence from hibernation usually occurs in late February or early March (Hoogland 2003, p. 235).

Mating begins 2 to 5 days after females emerge from hibernation, and can continue through early April (Hoogland 2003, p. 236). Approximately 97 percent of female Utah prairie dogs breed in any given year. They come into estrus (period of greatest female reproductive responsiveness usually coinciding with ovulation) and are sexually receptive for a few hours for only 1 day during the breeding season (Hoogland 2001, p. 919). Females give birth to only one litter per year, in April or May (Hoogland 2001, pp. 919–920; Hoogland 2003, p. 236). Only 67 percent of female prairie dogs successfully wean a litter, which ranges from one to seven pups, with an average of four pups (Pizzimenti and Collier 1975, p. 2; Wright-Smith 1978, p. 10; Hoogland 2001, pp. 919–920, 923). The young emerge from their nursery burrow by early to mid-June and primarily forage on their own (Hoogland 2003, p. 236).

Prairie dog pups attain adult size by October and reach sexual maturity at the age of 1 year (Wright-Smith 1978, p. 9). Less than 50 percent of Utah prairie dogs survive to breeding age (Hoogland 2001, p. 919). Male Utah prairie dogs frequently cannibalize juveniles, which may eliminate 20 percent of the litter (Hoogland 2003, p. 238). Only about 20 percent of females and less than 10 percent of males survive to age 4 (Hoogland 2001, Figures 1 and 2, pp. 919–920). Utah prairie dogs rarely live beyond 5 years of age (Hoogland 2001, p. 919).

Natal dispersal (movement of first-year individuals away from their area of

birth) and breeding dispersal (movement of sexually mature individuals away from the areas where copulation occurred) are comprised mostly of male prairie dogs. Young male Utah prairie dogs disperse in the late summer, with average dispersal events of 0.56 kilometers (km) (0.35 mile (mi)) and long-distance dispersal events of up to 1.7 km (1.1 mi) (Mackley 1988, p. 10). Most dispersers move to adjacent territories (Hoogland 2003, p. 239).

Utah prairie dogs are organized into social groups called clans, consisting of an adult male, several adult females, and their offspring (Wright-Smith 1978, p. 38; Hoogland 2001, p. 918). Clans maintain geographic territorial boundaries, which only the young regularly cross, although all animals use common feeding grounds.

Habitat Requirements and Food Habits

Utah prairie dogs occur in semiarid shrub-steppe and grassland habitats (McDonald 1993, p. 4; Roberts *et al.* 2000, p. 2; Bonzo and Day 2003, p. 1). Within these habitats, they prefer swale-type formations where moist herbaceous vegetation is available (Collier 1975, p. 43; Crocker-Bedford and Spillett 1981, p. 24). Vegetation on prairie dog colonies is of short stature and allows the prairie dogs to see approaching predators and to have visual contact with other members of the colony (Collier 1975, p. 54; Crocker-Bedford and Spillett 1981, p. 25; Player and Urness 1983, pp. 517, 522).

Utah prairie dogs are predominantly herbivores, though they also eat insects (primarily cicadas (*Cicadidae*)) (Crocker-Bedford and Spillett 1981, p. 8; Hoogland 2003, p. 238). Grasses are a staple of their annual diet (Crocker-Bedford and Spillett 1981, p. 8; Hasenyager 1984, pp. 19, 27), but other plants are selected during different times of the year. Utah prairie dogs only select shrubs when they are in flower, and then only eat the flowers (Crocker-Bedford and Spillett 1981, p. 8). Forbs are consumed in the spring. Forbs also may be crucial to prairie dog survival during drought (Collier 1975, p. 43).

Soil characteristics are an important factor in the location of Utah prairie dog colonies (Collier 1975, pp. 52–53; Turner 1979, p. 51; McDonald 1993, p. 9). Well-drained soils are necessary for Utah prairie dogs' burrows. Soils should be deep enough (at least 1 meter (m)

(3.3 feet (ft)) to allow burrowing to depths sufficient to provide protection from predators and insulation from environmental and temperature extremes (McDonald 1993, p. 9). Soil color may aid in disguising prairie dogs

from surface predators (Collier 1975, p. 53).

Historical Distribution and Abundance

The Utah prairie dog is the westernmost member of the *genus Cynomys*. Historically, the species' distribution included portions of Utah in Beaver, Garfield, Iron, Kane, Juab, Millard, Piute, Sanpete, Sevier, Washington, and Wayne Counties (Collier 1975, Figure 1, p. 16). The Utah prairie dog may have occurred in portions of over 700 different sections (a section is a land unit equal to 260 hectares (ha) (640 acres (ac)) in southwestern Utah (Collier and Spillett 1973, Table 1, p. 86); but the actual area that the species occupied within each of these sections is not known. While the historical abundance was estimated at 95,000 animals (McDonald 1993, p. 2), we do not consider this a reliable estimate because it was derived from informal interviews with landowners and not actual survey data.

Utah prairie dog populations began to decline when control programs were initiated in the 1920s, and by the 1960s, the species' distribution was greatly reduced as a result of poisoning and unregulated shooting (see *B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes* below), sylvatic plague (a nonnative disease (see *C. Disease or Predation* below), drought, and habitat alteration from conversion of land to agricultural crops (see *A. Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range* below) (Collier and Spillett 1972, pp. 32–35; Service 1991, pp. 3, 6). While the actual numeric reductions in population and habitat occupancy are not known, it is clear that by the early 1970s, the Utah prairie dog was eliminated from large portions of its historical range and populations declined to an estimated 3,300 individuals distributed among 37 Utah prairie dog colonies (Collier and Spillett 1972, pp. 33–35).

Current Distribution and Abundance

The Utah prairie dog's current range is limited to the southwestern quarter of Utah in Beaver, Garfield, Iron, Kane, Piute, Sevier, and Wayne Counties. The species occurs in three geographically identifiable areas within southwestern Utah, which are designated as recovery areas in our 1991 Recovery Plan (Service 1991, pp. 5–6) and in the petition, and as recovery units in our Draft Revised Recovery Plan (Service 2010, pp. 1.3–3, 3.2–7 to 3.2–8). These three recovery units are: (1) The Awapa Plateau in portions of Piute, Garfield,

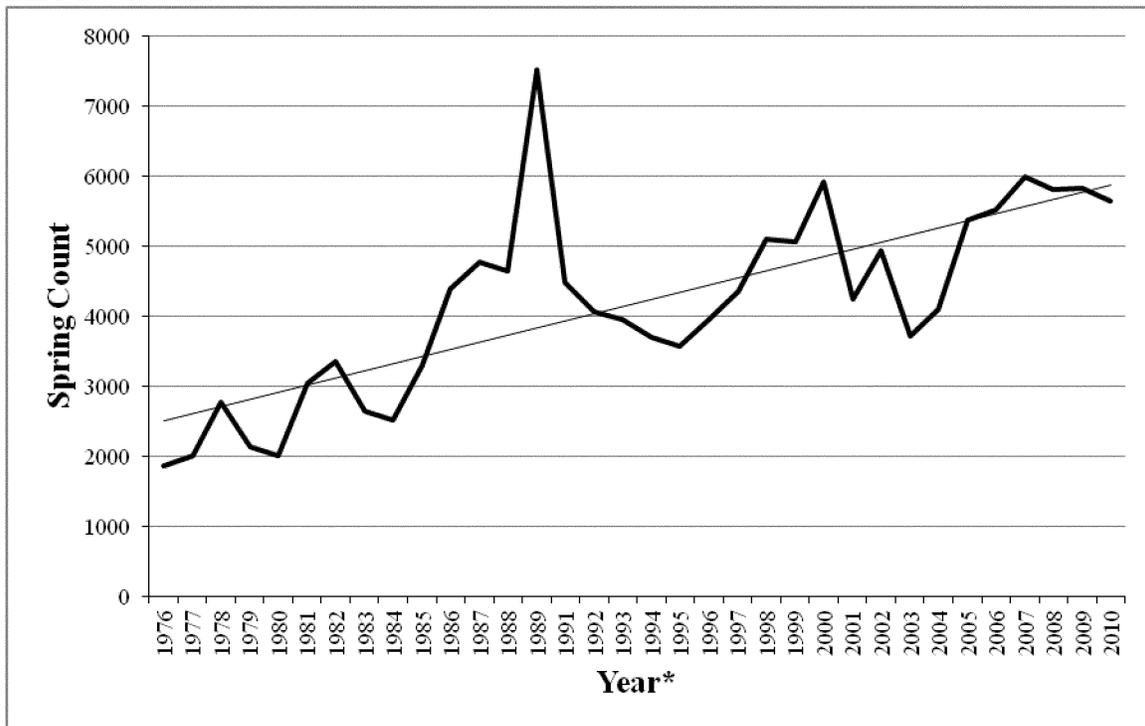
Wayne, and Sevier Counties; (2) the Paunsaugunt in western Garfield County, extending into small areas of Iron and Kane Counties; and (3) the West Desert in Iron County, extending into southern Beaver and northern Washington Counties.

The best available information concerning Utah prairie dog habitat and population trends comes from surveying and mapping efforts conducted by the UDWR annually since 1976. These surveys (hereafter referred to as "spring counts") count adult Utah prairie dogs every year on all known and accessible colonies in April and May, after the adults have emerged, but before the young are above ground in June (see "Life History").

Prairie dog spring counts typically underestimate the actual number of adult animals, because only 40 to 60 percent of individual prairie dogs are above ground at any one time (Crocker-Bedford 1975, p. 6). Therefore, we assume that spring counts represent approximately 50 percent of the adult population. We calculate total population estimates from the spring counts by taking into account the proportion of animals we expect to see (roughly 50 percent as just discussed), the proportion of successfully breeding adult females (67 percent of the 97 percent), and average litter size (four pups) (see "Life History" section above). Taking these factors into consideration, the total population estimate, accounting for reproduction and juveniles, is the spring count multiplied by 7.2. It should be noted that spring count surveys and population estimates are not censuses. Rather, they are designed to monitor population trends over time.

In our 2007 finding, we reported information on the spring counts conducted from 1976 to 2005 in each recovery unit: Awapa Plateau varied from 201 to 1,145 adult prairie dogs; Paunsaugunt varied from 652 to 2,205 adult prairie dogs; and the West Desert varied from 610 to 4,778 adult Utah prairie dogs (see Figure 1 below) (UDWR 2005, entire; 72 FR 7843). As of 2010, the Awapa Plateau recovery unit had a spring count of 614 adult prairie dogs, the Paunsaugunt recovery unit had 835 adult prairie dogs, and the West Desert recovery unit had 4,199 adult prairie dogs (see Figure 1 below) (UDWR 2010a, entire). Overall, spring counts from the past 34 years show considerable annual fluctuations, but stable-to-increasing long-term trends (Figure 1) (UDWR 2005, entire; UDWR 2010a, entire).

FIGURE 1. Utah Prairie Dog Spring Counts with Rangewide Population Trend Line 1976–2010.



* 1990 surveys are not included because they were incomplete (*i.e.*, they did not include private lands) due to staffing and budget limitations.

In addition to population trend information, the UDWR surveys provide information on the amount of mapped and occupied habitat across the species' range. We define mapped habitat as all areas within the species' range that were identified and delineated as being occupied by Utah prairie dogs at any time since 1976. Occupied habitats are defined as areas that currently support Utah prairie dogs (*i.e.*, where prairie dogs are seen or heard or where active burrows or other signs are found). The UDWR has mapped 24,142 ha (59,656 ac) of habitat rangewide, of which 13,365 ha (33,025 ac) were occupied in 2009 (UDWR 2010b, entire). All of the mapped habitat is not occupied by Utah prairie dogs, as the species' distribution is constantly shifting across the landscape. Additional information on Utah prairie dog distribution, abundance, and trends in each recovery unit can be found in our Draft Revised Recovery Plan (Service 2010, section 1.3)

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a

species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may contribute to the risk of extinction of the species such that the

species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing or reclassification may be warranted. In our finding for this petition to reclassify a species from threatened to endangered, the information should contain evidence sufficient to suggest that threats that may be acting on the species could result in the species being currently in danger of extinction versus being likely to become so in the foreseeable future.

In making this 90-day finding, we evaluated whether information regarding the threats to the Utah prairie dog, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

A. Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petition

The Petitioners state that threats to the species' habitat include the following: (1) Habitat loss from agricultural and urban land conversions; (2) livestock grazing; (3) road construction, off-highway vehicle (OHV) use, and recreation; (4) oil, gas, and mineral development and seismic exploration; and (5) impacts of isolation and fragmentation.

Habitat Loss From Agricultural and Urban Land Conversion

The Petitioners provide two citations (McDonald 1996, pp. 1–2; O'Neill *et al.* 1999, pp.1–2) that described a decline in the species' rangewide habitat occupancy from the 1920s through 1995. Based on these citations, the Petitioners calculate that occupied Utah prairie dog habitat declined from 181,299 to 2,824 ha (448,000 to 6,977 ac) as of 1995, a decline of 98.4 percent.

The Petitioners state that much of the historical, high-quality Utah prairie dog habitat was in valleys, where crop agriculture and urban activities and expansion historically occurred and are ongoing (Forest Guardians *et al.* 2003, p. 55). The Petitioners cite ongoing habitat loss due to urbanization as a threat to the Utah prairie dog, particularly in the West Desert recovery unit (Bonzo and Day 2003, p. 23) which contains the highest percentage of Utah prairie dogs on private land and is undergoing the highest rate of urbanization compared to other areas across the species' range (Iron County 2006, p. 22).

The Petitioners discuss various urban development projects that resulted in translocation of Utah prairie dogs and loss of their habitat, both legally (Bonzo and Day 2003, pp. 22–23) (*i.e.*, under habitat conservation plan (HCP) section 10(a)(1)(B) permits and through section 7 consultation) and illegally (McDonald 1996, pp. 24–25). The Petitioners also state that increasing development on private lands can negatively impact prairie dogs on adjacent Federal lands by increasing human activities such as OHV use in previously undisturbed habitats (Forest Guardians *et al.* 2003, p. 57). Finally, the Petitioners are concerned that Utah School and Institutional Trust Lands Administration (SITLA) lands containing Utah prairie dog habitat are being sold to private landowners and, therefore, are not safe from future development (Williams 2002, pp. 91–93).

Livestock Grazing

The petition states that livestock grazing, particularly overgrazing, can degrade Utah prairie dog habitat by causing shrub encroachment (McDonald 1993, pp. 6, 16). The Petitioners provide numerous general references that characterize the effects of overgrazing to grassland habitats, including reducing grass cover and vegetative biomass, degrading riparian areas, damaging cryptobiotic crusts (communities of cyanobacteria, green algae, lichens, mosses, liverworts, and microorganisms that colonize the surface of bare soil), degrading soil conditions, and increasing invasive weeds and wildfires (Forest Guardians *et al.* 2003, pp. 57–75).

With respect to livestock grazing impacts to Utah prairie dogs specifically, the Petitioners cite the 1991 Utah Prairie Dog Recovery Plan (Service 1991, p. 11), a 1993 analysis of 20 years of Utah prairie dog recovery efforts (McDonald 1993, pp. 16–17, 55), and the Utah Prairie Dog Interim Conservation Strategy (Utah Prairie Dog Recovery Implementation Team (UPDRIT) 1997, p. 5) as acknowledging the potential for livestock grazing to degrade Utah prairie dog habitat. The Petitioners conclude that livestock grazing must be recognized as a threat to Utah prairie dogs and curtailed in a manner that promotes Utah prairie dog conservation (Forest Guardians *et al.* 2003, p. 58).

Road Construction, Off-Highway Vehicle Use, and Recreation

The Petitioners state that roads have a negative impact on Utah prairie dogs by increasing direct mortalities from motor vehicle strikes, through loss of habitat due to new road construction and upgrades of existing roads, and through degradation of habitat and increased disturbance due to increased OHV use (Noriega 2000, entire; Forest Guardians *et al.* 2003, pp. 76–79). The Petitioners conclude that recreational activity in Utah prairie dog habitat, including camping, hunting and fishing, OHV use, and hiking, can lead to population declines or extirpation of colonies through direct disturbance or habitat loss (Forest Guardians *et al.* 2003, pp. 78–79). The Petitioners specifically mention the possible extirpation of the Three Peaks Utah prairie dog colony due to intense recreational use (Service 2005a, p. 5).

Oil, Gas, and Mineral Development, and Seismic Exploration

The Petitioners cite numerous references stating that oil and gas

exploration and extraction results in the degradation and loss of vegetation and habitats through crushing vegetation, introducing weed species, and increasing soil erosion or soil compaction (Forest Guardians *et al.* 2003, p. 80). The Petitioners rely on two studies (Young and Sawyer 1981, entire; Menkens and Anderson 1985, entire) that expressed concerns about the impacts of crushed vegetation, compacted soil, and the potential for noise disruption on hibernating prairie dogs.

The petition states that oil and gas leases are being offered in Millard and Sevier Counties within the range of the Utah prairie dog (Forest Guardians *et al.* 2003, p. 88). Mineral development, including shalestone and flagstone extraction, and geothermal leasing are cited as occurring within the range of the Utah prairie dog (Forest Guardians *et al.* 2003, pp. 88–89).

Impacts of Isolation and Fragmentation

The petition states that the remaining prairie dog colonies tend to be isolated and fragmented due to loss and degradation of Utah prairie dog habitat, and the effects of extermination campaigns and plague. Factors such as low reproductive rate, genetic drift, and inbreeding may increase the potential for local extinctions in small populations (Brussard and Gilpin 1989, p. 37). The Petitioners cite several references on black-tailed prairie dogs to conclude that these small, isolated colonies are then more susceptible to local extirpation from factors such as sylvatic plague (Miller *et al.* 1994, 1996 *in* Forest Guardians *et al.* 2003, p. 90; Mulhern and Knowles 1995, p. 26; Wuerthner 1997, pp. 459, 464).

Evaluation of Information Provided in the Petition and Available in Service Files

The Petitioners conclude that the factors responsible for the loss of Utah prairie dog habitat include habitat loss from agricultural and urban land conversions; livestock grazing; road construction, OHV use, and recreation; oil, gas, and mineral development and seismic exploration; and the impacts of isolation and fragmentation (Forest Guardians *et al.* 2003, p. 54). We agree with the Petitioners' assessment that these factors are threats to the Utah prairie dog. These factors are, in part, the reason that the Utah prairie dog is Federally listed as a threatened species (Service 2010, section 1.7; 75 FR 5705, September 17, 2010). However, as described below, the Petitioners do not present substantial information indicating that these factors will cause

the Utah prairie dog to be in current danger of extinction such that it may warrant reclassification from threatened to endangered.

Habitat Loss From Agricultural and Urban Land Conversion

We agree with the Petitioners' conclusion that historical Utah prairie dog habitat and populations were lost to agricultural conversion and urban development. However, we believe that the Petitioners' assessment of the extent of historical habitat loss and population decline is inaccurate. The Petitioners' assessment is based largely on the assumption that Utah prairie dogs historically occurred within 713 sections of land (Collier 1975, p. 15), and that mapped habitat was reduced to 2,824 ha (6,977 ac) by 1995 (McDonald 1997, p. 11). However, much of the area within the 713 sections of land contains unsuitable habitat and was never occupied by prairie dogs (see "Historical Distribution and Abundance" section above). Therefore, it is inaccurate to calculate historical habitat loss based on the total area within those 713 sections (184,666 ha (456,320 ac)).

Our current data show that there are 24,142 ha (59,656 ac) of mapped habitat rangewide, of which 13,365 ha (33,025 ac) were occupied in 2009 (UDWR 2010b, entire). This is almost five times the amount of occupied habitat reported by the Petitioners. Furthermore, our data show that Utah prairie dog habitat occupancy and population trends (see Figure 1) have been stable to increasing since 1995 (McDonald 1997, p. 11; Bonzo and Day 2000, p. 13; UDWR 2010b, entire). Overall, we believe that the Petitioners overestimated the amount of occupied historical habitat, and used outdated information that does not reflect the current amount of occupied habitat and more recent population trends. Given that our data show larger areas of occupied habitat than reported by the Petitioners, and stable-to-increasing long-term population trends, we conclude that we have no substantial scientific or commercial information to indicate that threats from habitat loss may warrant reclassification of the Utah prairie dog from threatened to endangered. We further discuss the consequences of the loss of historical habitat in the Significant Portion of the Range section (see Finding below).

We acknowledge that historical Utah prairie dog habitat was lost in large part due to agricultural conversion, a factor considered in our May 29, 1984, reclassification of the species from endangered to threatened (49 FR 22330).

However, the Petitioners do not provide any information on current losses from new agricultural developments. We do not have any information in our files indicating that there are any recent conversions of Utah prairie dog habitat to agricultural use.

We agree that habitat loss due to urbanization is a threat to the species, particularly in the West Desert recovery unit (primarily Iron County); we identified this threat in our May 29, 1984, reclassification of the species from endangered to threatened (49 FR 22330), the 1991 Utah Prairie Dog Recovery Plan (Service 1991, pp. iv, 11), and the 2010 Draft Revised Recovery Plan (Service 2010, pp. 1.7–1 to 1.7–2). Loss of habitat due to urbanization remains one of the primary threats to the species, and is one of the primary reasons that the species remains listed as threatened. However, the Petitioners do not present information that indicates that threats from urbanization may warrant reclassification of the Utah prairie dog from threatened to endangered.

Since our 2007 finding, and primarily during development of our Draft Revised Recovery Plan (Service 2010, entire), we assessed the most currently available information regarding impacts to Utah prairie dog habitat from urbanization. We summarize this evaluation below to ensure that our current information remains consistent with our 2007 finding.

The threatened status of the Utah prairie dog results in the need to develop and implement habitat conservation plans (HCPs) to minimize and mitigate impacts to the species from urban development on non-Federal lands. Ongoing development and the resulting incidental take of Utah prairie dogs in Iron County is authorized through 2018 under a permit issued under section 10(a)(1)(B) of the Act and the Iron County HCP (Iron County 2006, entire). The Iron County HCP process includes an annual assessment of the amount of incidental take allowed each year. The allowed annual incidental take is calculated as 10 percent of the running 5-year average of prairie dogs counted on Federal or otherwise-protected lands in the West Desert recovery unit.

As of 2009, following 11 years of implementation, the Iron County HCP has permitted a total of 154 ha (381 ac) of habitat and 937 Utah prairie dogs to be incidentally taken since 1998. This is an average of 78 prairie dogs and 12.9 ha (32 ac) of habitat taken annually. The Iron County HCP expires in 2018. We believe these past levels of take are reflective of the average levels of take that are likely to occur in the future,

given recent stable population trends for the species. Using the average annual take, we estimate that an additional 702 prairie dogs and 116.5 ha (288 ac) of habitat may be taken through 2018, for a total of 271 ha (669 ac) of occupied habitat and 1,639 prairie dogs over the life of the permit. If the estimated level of take occurs, approximately 6.5 percent of occupied habitat and 5.6 percent of the Utah prairie dog population (see "Current Distribution and Abundance" above) in the West Desert recovery unit will be lost to urbanization. While this amount of take is not to be dismissed, we concluded that this level of take over the life of the 20-year permit was not likely to jeopardize the continued existence of the species (Service 1998, p. 15). Over the last ten years of implementing this HCP, the Utah prairie dog population has been stable to increasing (UDWR 2005, entire; UDWR 2010a, entire). Based on these population trends while implementing the HCP, we anticipate the additional take estimated over the remaining life of the permit does not threaten the species to the extent that reclassification, or "uplisting," to endangered status may be warranted. In addition, the take authorized under the Iron County HCP is mitigated through restoration of habitat on Federal lands and the translocation of animals from impacted private lands to approved translocation sites on Federal lands.

There is no current mechanism (*i.e.*, no approved HCP) to authorize incidental take of Utah prairie dogs on non-Federal lands in the Awapa or Paunsaugunt recovery units; and no current mechanism to authorize incidental take in Iron County beyond 2018. We are working with the counties to develop a rangewide HCP that would authorize additional take in Iron, Garfield, and Wayne Counties. The rangewide HCP will be required to minimize and mitigate impacts to the extent practicable, and to ensure that the action will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. Similarly, although there is the potential for SITLA to sell lands occupied by Utah prairie dogs to private developers, the development of these lands could only occur through a permitting process and development of an HCP.

We do not dispute that human activities (*i.e.*, recreation) may increase on Federal lands as a result of nearby private developments. However, the Petitioners only identify one specific development on private land in holdings on the U.S. Forest Service (USFS) Powell Ranger District that could negatively impact prairie dogs. Because

the level of development from this one project is on a small scale with localized impacts, and not indicative of more widespread development, we believe that the information does not indicate that this threat contributes to the risk of extinction of the species such that the species may warrant reclassification to endangered.

In summary, we do not have information, and the Petitioners do not present information, indicating that agricultural conversions are still occurring at high levels or that they threaten the Utah prairie dog to the extent that it may be in current danger of extinction. Habitat loss due to urbanization is a threat to the species, and one of the primary reasons that the species remains listed as threatened. Because of the species' threatened status (see *D. Inadequacy of Existing Regulatory Mechanisms* below), urban development in Utah prairie dog habitats on non-Federal lands can only proceed under approved HCPs and associated 10(a)(1)(B) permits. The only existing countywide HCP for the Utah prairie dog is in Iron County, Utah, and the projected loss of habitat from development through 2018 under the Iron County HCP does not rise to a level where it places the species in danger of extinction. The Iron County HCP was authorized in 1998; since its implementation, the rangewide population of the Utah prairie dog has remained stable to increasing (see Figure 1). Therefore, the Petitioners do not provide substantial information—and we do not have information in our files—that indicates that threats from urbanization may warrant reclassification of the Utah prairie dog from threatened to endangered.

Livestock Grazing

We concur that improper livestock grazing can affect various attributes of prairie dog habitat and food supply. However, most of the citations provided by the Petitioners speak generally to the impacts of improper grazing to grassland habitats. The citations provided by the Petitioners that are specific to Utah prairie dogs indicate that there was historical loss of Utah prairie dog habitats due to improper grazing, and some site-specific reductions in habitat quality, particularly at translocation sites (McDonald 1993, pp. 16–17). However, information in the petition and in our files fails to indicate that grazing negatively impacts Utah prairie dogs to the extent that uplisting to endangered status may be warranted.

We agree that improperly managed grazing regimes can have negative

effects on Utah prairie dogs and their habitat, including decreased habitat quality and decreased vegetation diversity (Collier and Spillett 1973, p. 86; McDonald 1993, p. 16). Overgrazing can decrease forage availability, potentially increase Utah prairie dog foraging time, and consequently decrease vigilance and survivorship (Ritchie 1998, p. 9; Cheng and Ritchie 2006, pp. 550–551). Improperly grazed lands resulting in lowered plant diversity can be vulnerable to greater amounts of invasive plant species. Invasive plant species, such as cheatgrass, create an altered fire regime, increasing the amount of fire and further reducing native grasses and shrubs (Masters and Sheley 2001, p. 503). The resultant decreased plant diversity can impact Utah prairie dog weight gain and survival, particularly during drought conditions (Ritchie 1998, p. 9). Invasive species, cheatgrass in particular, occur throughout the range of the Utah prairie dog. However, since our 2007 finding, the Bureau of Land Management (BLM) has released revised Resource Management Plans concluding cheatgrass monocultures are generally localized as a result of habitat perturbations (BLM 2008a, pp. 3–34). We conclude that while invasive species may impact Utah prairie dog habitat on a site-specific basis, information provided by the Petitioners and in our files does not indicate that invasive species may threaten the Utah prairie dog across the species' range to the point that uplisting to endangered status may be warranted.

We further agree that overgrazing in swale habitats historically led to erosion and reduced the amount of moisture available for grasses and forbs (Crocker-Bedford and Spillett 1981, p. 22). However, the Petitioners provided no information regarding the current level of swale and riparian habitat degradation from livestock grazing in Utah prairie dog habitats, and we have no information in our files showing that this is a long-term or rangewide concern.

We agree that soil characteristics are an important factor in the location of Utah prairie dog colonies (Collier 1975, pp. 52–53; Turner 1979, p. 51; McDonald 1993, p. 9). The petitioners provided ample information on how livestock grazing reduces soil crusts. However, information provided by the Petitioners and in our files does not indicate that the loss of soil crusts has had any impact on the Utah prairie dog.

We have information in our files that demonstrates that livestock grazing also can have beneficial effects on Utah prairie dogs. For example, in properly

managed, grazed habitats, there is higher quality vegetation and a greater amount of nutrient-rich young shoots (Cheng and Ritchie 2006, p. 554). Livestock grazing in early spring, fall, and winter is generally beneficial to Utah prairie dogs because it reduces horizontal cover, which allows animals to spend less time looking for predators (Ritchie and Brown 2005, p. 15). Prescribed rotational grazing may help to maintain suitable vegetation height for Utah prairie dogs, especially in highly productive sites like irrigated pastures or where shrub invasion has occurred (Ritchie and Cheng 2001, p. 2). Other studies suggest that prairie dog density is positively correlated with heavy grazing, which simulates the shortgrass environment preferred by prairie dogs (Coppock *et al.* 1983, p. 7; Holland *et al.* 1992, p. 686; Marsh 1984, p. 203; Fagerstone and Ramey 1996, pp. 88, 92; Slobodchikoff *et al.* 1988, p. 406). Even so, tall vegetation is more common in Gunnison and Utah prairie dog colonies than in black-tailed prairie dog colonies (Hoogland 2003, p. 239). Utah prairie dogs use this taller vegetation as hiding cover. Because Utah prairie dogs use habitats with a shrub component, the UPDRIT revised the Utah prairie dog vegetation guidelines to include a higher percentage of shrubs (UPDRIT 2006, p. 1). This supports our conclusion that there is not substantial information in the petition and in our files suggesting that livestock grazing and shrub encroachment negatively impact the Utah prairie dog to the extent that uplisting to endangered status may be warranted.

In summary, we agree with the Petitioners that livestock grazing can be a threat to the Utah prairie dog, particularly in site-specific areas where improper grazing negatively affects habitat conditions. We have previously acknowledged this threat, most recently in our Draft Revised Recovery Plan (Service 2010, pp. 1.7–3 to 1.7–4). However, neither the Petitioners' information nor information in our files supports the assertion that grazing is endangering the Utah prairie dog with extinction, especially given that Utah prairie dog populations are stable to increasing rangewide (see Figure 1 above) (UDWR 2005, entire; UDWR 2010a, entire).

Road Construction, Off-Highway Vehicle Use, and Recreation

We acknowledge that direct mortality of prairie dogs occurs on roads. We also acknowledge that OHV use and other types of recreational use, including recreational infrastructure development,

has occurred in Utah prairie dog habitat, resulting in habitat loss and possibly, in the instance of the Three Peaks colony, extirpation of the colony (Service 2005a, p. 5).

In our 90-day finding in 2007, we concluded that the impacts of roads and OHV use were limited to localized areas and did not result in population-level effects (72 FR 7843). Since 2007, we have evaluated additional information regarding OHV use across the species' range. We find that there is an increased planning effort on Federal lands toward directing OHV use to designated trails or play areas, and consequently away from Utah prairie dog habitats (Service 2010, p. 1.7–4). Currently, all of the USFS districts and two of the three BLM field offices within the range of the species include off-road travel restrictions in their land use plans. For example, the Dixie and Fishlake National Forests prohibit cross-country vehicle travel forest wide (U.S. Department of Agriculture (USDA) 2006, p. 16; USDA 2009, p. 2). Almost the entire Richfield BLM district is either closed to OHV use or limited to designated routes (BLM 2008b, pp. 52–55). The Kanab BLM Resource Management Plan includes a conservation measure to preclude cross-country motorized use in occupied or inactive Utah prairie dog colonies (BLM 2008c, p. 62).

In summary, we do not have substantial information suggesting that the localized impacts of roads and OHV recreational use result in population-level effects. In addition, the majority of existing land use plans across the range of the Utah prairie dog restrict off-road recreational use in order to avoid or minimize impacts to prairie dog habitat. Therefore, we conclude that the Petitioners do not provide substantial information—and we do not have information in our files—that indicates that threats from roads and OHV recreational use may warrant reclassification of the Utah prairie dog from threatened to endangered.

Oil, Gas, and Mineral Development and Seismic Exploration

We are aware that oil and gas leasing is occurring within the range of the Utah prairie dog. In our 2007 90-day finding, we stated that there was no scientific or commercial information either in the petition or in our files that quantified the extent of these activities in occupied Utah prairie dog habitat. Since our 2007 90-day finding, the USFS completed a biological assessment for their Oil and Gas Leasing Environmental Impact Statement and determined that no Utah prairie dog habitat will be impacted by

development or production activities due to a no-surface-occupancy stipulation (USFS 2010, p. 22). This stipulation prohibits occupancy or disturbance on the lease parcel ground surface and, therefore, oil and gas resources may only be accessed through use of directional drilling from sites outside the no-surface-occupancy area. Furthermore, using a geographic information system to analyze the overlap between Utah prairie dog recovery units and energy resources, we found there are very little coal bed methane and geothermal reserves within the range of the species (Idaho National Engineering and Environmental Laboratory 2003, p. 1; Energy Information Administration 2007, p. 1). In addition, there are no producing oil or gas wells within any of the three recovery units (Utah Division of Oil, Gas, and Mining 2009, p. 1). Based on the location of known reserves and the lack of producing oil and gas wells, we expect direct and indirect impacts from oil and gas development on Utah prairie dogs will be minor and localized.

Since publishing our 2007 90-day finding, we have completed programmatic consultations with the BLM and USFS regarding oil and gas development on lands they manage (BLM 2008b, pp. A11–18; USFS 2010, pp. 10–11). Through the consultation process, we worked with both agencies to develop a set of avoidance and minimization measures for Federal oil and gas leases within the range of the Utah prairie dog (BLM 2005, p. 8; BLM 2008b, pp. A11–18; BLM 2008c, pp. A3–9, A9–13 to A9–14; USFS 2010, pp. 10–11). These measures include prohibitions against surface disturbance within 0.8 km (0.5 mi) of active Utah prairie dog colonies, and prohibitions against permanent disturbance within 0.8 km (0.5 mi) of potentially suitable, unoccupied Utah prairie dog habitat, as identified by UDWR (BLM 2005, p. 8; BLM 2008b, pp. A11–18; BLM 2008c, pp. A3–9, A9–13 to A9–14; USFS 2010, pp. 10–11). These measures are currently attached to all BLM and USFS leases within the Utah prairie dog's range. We conclude that these measures avoid and minimize threats to the Utah prairie dog from oil and gas development.

We are aware that seismic exploration is occurring within the range of the Utah prairie dog. The USFS estimates that up to 48.6 ha (120 ac) of Utah prairie dog habitat on USFS land (less than 1 percent of the total available suitable habitat on USFS lands) may be affected by seismic surveys (USFS 2010, p. 22). We do not have similar estimates for BLM lands within Utah prairie dog

habitat. However, given the lack of proven reserves and producing wells within any of the recovery units, we anticipate low levels of future seismic exploration on BLM lands. Furthermore, although the Petitioners cited studies that identified potential effects of seismic testing on Utah prairie dogs, these same studies concluded that any impact from seismic testing on Utah prairie dogs is negligible (Young and Sawyer 1981, p. 2; Menkens and Anderson 1985, p. 13). After evaluating the information provided by Petitioners and in our files, we conclude that threats from seismic exploration are localized and temporary.

In summary, we are aware that oil, gas, and mineral development and seismic exploration are occurring within the range of the Utah prairie dog. We agree that oil, gas, and mineral development can impact the species where it occurs—the Utah prairie dog is listed as a threatened species due to threats from a variety of human land use activities. However, there has been a low level of exploration and development to date, and projections for future exploration and development remain low for the majority of the species' range (Service 2010, p. 1.7–6). In addition, the Federal land management agencies have committed to conservation measures that effectively avoid impacts in occupied or historically occupied Utah prairie dog habitats and minimize impacts in suitable habitats. Thus, we conclude that the Petitioners do not provide substantial information—and we do not have information in our files—that indicates that threats from oil, gas, and mineral development, and seismic exploration may threaten the Utah prairie dog to the point that uplisting it from threatened to endangered under the Act may be warranted.

Isolation and Fragmentation

We concur that the majority of existing Utah prairie dog colonies are small, numbering fewer than 200 individuals (UDWR 2005, entire), and that habitat loss from a variety of land use activities can result in increased isolation and fragmentation of prairie dog habitats. However, the studies presented by the Petitioners for black-tailed prairie dogs may not be directly applicable to the small size and isolation of Utah prairie dog colonies, particularly with respect to the species' response to plague (see *C. Disease or Predation* below). Plague is active across the landscape and, as a result, colonies tend to increase in numbers for a period of years, decline to very small numbers following a plague event, and then

increase again (see *C. Disease or Predation* below). Although not explicitly discussed in our 2007 90-day finding, studies show that the lower density of white-tailed prairie dog colonies (compared to black-tailed or Gunnison's prairie dog colonies) may actually benefit that species by slowing plague transmission rates (Eskey and Haas 1940, pp. 18–19; Cully 1993, p. 40; Cully and Williams 2001, p. 898). This benefit also may apply to Utah prairie dogs, which have similar colony sizes and densities to white-tailed prairie dogs (Service 2010, p. 1.7–7). Despite the fact that Utah prairie dog colonies tend to be small and dispersed across the landscape, their overall population trend is stable to increasing (see Figure 1, above). Therefore, we conclude that the Petitioners do not provide substantial information—and we do not have information in our files—that indicates that isolation and fragmentation may threaten the Utah prairie dog to the point that the species may warrant uplisting from threatened to endangered.

Summary of Factor A

In summary, we find that the information provided in the petition, as well as other information in our files, does not constitute substantial scientific or commercial information indicating that uplisting the Utah prairie dog from threatened to endangered under the Act may be warranted due to present or threatened destruction, modification, or curtailment of habitat. We agree that there are numerous human land-use threats to the species, including those presented in the Petition, such as urbanization; agricultural uses; livestock grazing; roads; OHV and other recreational uses; and oil, gas, and mineral development and seismic exploration. These threats may result in the loss, fragmentation, and isolation of prairie dog populations. These threats are the reason the Utah prairie dog remains listed as a threatened species. As stated in the Background section, a threatened species is defined as a species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, whereas an endangered species is a species which is currently in danger of extinction throughout all or a significant portion of its range. The information on threats discussed in Factor A indicates that the Utah prairie dog should continue to be listed as threatened. Many of the claims cited by the Petitioners, and information in our files, indicate that most of the threats have largely localized impacts on specific

Utah prairie dog colonies or complexes, particularly those impacts from livestock grazing; roads; OHV use; and oil, gas, and mineral development and seismic exploration. Therefore, we do not have substantial information indicating that the threats rise to the level at which they may put the species in current danger of extinction throughout all or a significant portion of its range.

Urbanization is one of the largest of the identified threats to the species (Service 2010, p. 1.8–4). For development to proceed, a section 10(a)(1)(B) permit and HCP with meaningful mitigation and compensation are required. In addition, the rangewide population of the Utah prairie dog is stable to increasing, indicating that ongoing threats are not having a negative effect on the recoverability of the species (see Figure 1 above). Thus, we have determined that the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to the Utah prairie dog to the extent that uplisting from threatened to endangered under the Act may be warranted.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petition states that illegal shooting of Utah prairie dogs still occurs (Forest Guardians *et al.* 2003, pp. 94–98) and provides references to show that shooting can negatively affect prairie dogs in general through population reduction, decreased colony expansion rates, and changes in behavior (Reading *et al.* 1989, p. 19; Miller *et al.* 1993, p. 91; Vosburgh and Irby 1998, pp. 366–368).

Evaluation of Information Provided in the Petition and Available in Service Files

Because the Utah prairie dog is already a listed species, shooting is prohibited by the Act, except as provided for by the special 4(d) rule (see 50 CFR 17.40(g) and *D. Inadequacy of Existing Regulatory Mechanisms* below). Therefore, we conclude that many of the Petitioners' citations regarding the effects of recreational or otherwise broad-scale shooting are not directly applicable to the Utah prairie dog. We acknowledge that isolated instances of shooting do occur, and that it is not feasible for UDWR and Federal land

management agencies to patrol all colony locations on a routine basis. Since the fall of 2007, three poisoning incidents and one shooting incident occurred in the West Desert recovery unit. These unauthorized killings resulted in impacts to a few colonies, but these impacts did not extend to the population level (Bell 2008, pers. comm.).

No information is available in the petition or in our files to indicate that illegal shooting occurs on a broad-scale, rangewide basis such that it may significantly affect the species at the population level. Therefore, we conclude that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that uplisting from threatened to endangered under the Act may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

Information Provided in the Petition

The Petitioners do not specifically identify predation as a threat to the Utah prairie dog. Predation is briefly mentioned by the petitioners as a component of the species ecology (Service 1991, p. 10); as a factor that results in mortality of translocated Utah prairie dogs (Service 1991, p. 13; UPDRIT 1997, p. 5); and as a factor that may increase due to overgrazing, road construction, and energy development (McDonald 1993, p. 6; Forest Guardians *et al.* 2003, pp. 58, 76, 83).

The Petitioners assert that sylvatic plague (*Yersinia pestis*), an exotic bacterial disease, is a significant threat to prairie dogs. They estimate that plague can result in 95 to 100 percent mortality in Gunnison prairie dog colonies (Barnes 1993, p. 33; Fitzgerald 1993, p. 52) and that recovery from plague in black-tailed prairie dog colonies is a slow process (Knowles 1995, p. 41). In their discussion on isolation and fragmentation, the Petitioners also indicated that small, isolated colonies of black-tailed and Gunnison prairie dogs are more susceptible to local extirpation from factors such as sylvatic plague (Miller *et al.* 1994, 1996 in Forest Guardians *et al.* 2003, p. 90; Mulhern and Knowles 1995, p. 26; Wuerthner 1997, pp. 459, 464).

The Petitioners cite numerous instances of documented and suspected plague events occurring throughout the Utah prairie dog range (Service 1991, p. 12; McDonald 1996, pp. 8–10; Bonzo and Day 2000, pp. 11–14). They also cite

ongoing research in Utah prairie dog habitat on plague mitigation through the use of insecticides to kill the fleas that carry the plague bacterium (Forest Guardians *et al.* 2003, p. 100). The Petitioners take the view that as long as plague is present in the ecosystem, the Utah prairie dog may not reach its recovery goals even if all other threat factors are removed (Forest Guardians *et al.* 2003, p. 100).

Evaluation of Information Provided in the Petition and Available in Service Files

In the 2007 90-day finding, we concluded that the Petitioners did not identify predation as a threat to the Utah prairie dog. We agree that predation can have adverse impacts on Utah prairie dogs in unnaturally fragmented colonies or at new translocation sites (Service 2010, p. 1.7–9). For example, badgers can disrupt a translocation site by digging up Utah prairie dogs that have not had a chance to fully develop a burrow system. However, predation is a natural component of healthy prairie dog populations (Collier and Spillet 1972, p. 36; Service 2010, p. 1.7–9). Thus, we conclude that predation can be a localized threat to some Utah prairie dog colonies, but we have no information to indicate that predation places the species in danger of extinction.

We agree with the petitioners that plague is a threat to the Utah prairie dog; this threat is one of the primary reasons that the species is listed as threatened. Plague was identified as a threat to the species in the 1984 reclassification (49 FR 22330) rule and the 1991 Recovery Plan. In the Draft Revised Recovery Plan, plague is in the top tier of threats to the species and is considered to be a primary threat to the species' survival and conservation (Service 2010, p. 1.7–7). We discussed plague in our 2007 finding, and present updated information to consider in this finding.

We acknowledge that plague exists within all three Utah prairie dog recovery units; individual Utah prairie dog colonies are affected by the disease; and there is currently no mechanism available to prevent periodic plague events from reoccurring. However, we conclude that the Petitioners mischaracterized how plague spreads through Utah prairie dog colonies and, therefore, its effects on the species, by primarily relying on results from studies of Gunnison's and black-tailed prairie dogs. For example, as discussed under A. Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range, white-tailed and Utah

prairie dog colonies are less dense and more widely dispersed than black-tailed or Gunnison prairie dog colonies. Studies of Gunnison's and black-tailed prairie dogs have shown that the higher density of their colonies contributes to plague transmission and subsequent mortality (Cully 1993, p. 40; Cully and Williams 2001, p. 901). Therefore, the lower density of white-tailed and Utah prairie dog colonies may slow plague transmission rates and reduce the overall long-term impact of the disease (Cully 1993, p. 40; Cully and Williams 2001, p. 901).

Social and behavioral traits of the Utah prairie dogs also may reduce the transmission of plague. Utah prairie dogs are more behaviorally similar to white-tailed prairie dogs than black-tailed prairie dogs. White-tailed prairie dogs (and similarly, Utah prairie dogs) spend less time socializing than black-tailed or Gunnison prairie dogs; this characteristic appears to favor their long-term persistence in a plague environment (Biggins and Kosoy 2001, p. 64; 75 FR 30338). Hibernation by Utah and white-tailed prairie dogs also may reduce or delay plague transmission among individual animals (Barnes 1993, p. 34).

Since our 2007 finding, we have learned more about potential methods to minimize the impacts of plague. Deltamethrin and Pyreperm are two insecticides ("dust") used to successfully control fleas on colonies of different prairie dog species, resulting in higher prairie dog survival rates (Seery *et al.* 2003, p. 721; Hoogland *et al.* 2004, p. 379; Biggins *et al.* in press 2009). Experimental vaccine-laden baits are being studied to determine their effectiveness in immunizing prairie dogs against plague; initial lab results showed high level of survival of black-tailed prairie dogs (Mencher *et al.* 2004, p. 5504; Rocke *et al.* 2008, p. 935). A systemic flea control bait is being tested to reduce flea loads on Utah prairie dogs, the primary vector in spreading plague in prairie dogs (Poche *et al.* 2008, pp. 11, 31–32; Jachowski 2009, pp. 14–16, 19–22). Although there are many ongoing efforts to mediate this threat to the Utah prairie dog, we do not yet know the long-term effectiveness of these plague-control methods, and thus do not rely on their potential success for our conclusions.

In summary, we acknowledge that plague is a threat to the Utah prairie dog. In fact, plague is one of the primary reasons the Utah prairie dog remains listed as a threatened species. However, as previously noted, Utah prairie dog population trends remain stable to increasing (see Figure 1 above) despite

the long-term presence of plague in the environment. Thus, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that uplisting from threatened to endangered under the Act may be warranted due to the effects of disease and predation.

D. Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The Petitioners make several assertions regarding the inadequacy of existing regulatory mechanisms, specifically discussing: (1) Downlisting; (2) the special 4(d) rule; (3) the Recovery Plan and Interim Conservation Strategy; (4) Federal land management policies; and (5) section 10 HCPs.

Downlisting

The Petitioners state that there was little basis for UDWR to request that the species be delisted in 1984 and little basis for the Service to partially grant the request by downlisting the Utah prairie dog to threatened. The Petitioners base their conclusion largely on Utah prairie dog population trend data from 1976 to 1983. They conclude that the Service originally downlisted the Utah prairie dog in 1984 for political reasons, and that the species has suffered since that downlisting (Forest Guardians *et al.* 2003, p. 103).

Special 4(d) Rule

In those circumstances where the standard regulatory provisions under the Act may not be necessary or appropriate for a threatened species, the Secretary of the Department of the Interior has the discretion under section 4(d) of the Act to determine in a special rule those measures and prohibitions that are necessary and advisable for the conservation of that species. The Petitioners evaluated the 1984 (49 FR 22330) and 1991 (56 FR 27438) special 4(d) rules for the Utah prairie dog. These special rules, as implemented by UDWR, authorize take of prairie dogs on agricultural lands. The Petitioners claim that, when considered cumulatively with threats such as translocation, habitat loss, and plague, the special 4(d) rule is likely harming the Utah prairie dog because of the species' low rate of reproduction (Hoogland 2001, pp. 918–924; Forest Guardians *et al.* 2003, p. 107).

Recovery Plan and Interim Conservation Strategy

The Petitioners assert that the Utah Prairie Dog Recovery Plan contributes to declines of the Utah prairie dog. They

believe that the Recovery Plan's scientific basis is in error, with specific respect to prairie dog litter sizes; that the recovery goal is too low; that the emphasis in the plan on translocations is flawed; that there is a lack of adequate staff and funding resources; and that the Recovery Plan neglects conservation of Utah prairie dogs on private lands (Forest Guardians *et al.* 2003, pp. 108–114, 147). They further discuss control authorized under the special 4(d) rule as a fundamental concern of the Recovery Plan (see Special 4(d) Rule above). The Petitioners also state that the Interim Conservation Strategy failed in adequately addressing threats such as plague and livestock grazing (see *A. Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range* above) (Forest Guardians *et al.* 2003, pp. 115–119).

Federal Land Management Policies

The Petitioners state that Federal land management policies contribute to the imperiled status of the Utah prairie dog (Forest Guardians *et al.* 2003, pp. 119–139). The Petitioners express concern regarding Animal and Plant Health Inspection Service (APHIS)—Wildlife Services' policies on grasshopper control and control of Utah prairie dogs. They conclude that livestock allotments on the BLM and USFS lands do not meet the recommended Interim Conservation Strategy vegetation guidelines (Forest Guardians *et al.* 2003, pp. 120–122). They also conclude that noxious weeds are a significant problem in all BLM management areas (Forest Guardians *et al.* 2003, pp. 123–124). The Petitioners assert that BLM believes that Utah prairie dogs will tolerate economic activity such as mineral extraction (Forest Guardians *et al.* 2003, p. 129), citing a 1997 BLM management plan. Finally, the Petitioners conclude that translocations of prairie dogs to Federal lands are not leading to increased Utah prairie dog populations and, therefore, should be considered a threat to the species.

Section 10 Habitat Conservation Plans

The Petitioners assert that existing HCPs undermine Utah prairie dog conservation efforts. They specifically discuss several small and large-scale (countywide) HCPs and associated permits, most of which were issued in the 1990s (Forest Guardians *et al.* 2003, pp. 150–161). The Petitioners conclude that the HCPs are flawed because they do not consider the cumulative impacts of incidental take, they do not include sufficient discussions of alternative actions, and they fail to implement mitigation.

Evaluation of Information Provided in the Petition and Available in Service Files

The inadequacy of existing regulatory mechanisms was not evaluated as a threat to the species in the 1973 listing (38 FR 14678, June 4, 1973), 1984 downlisting (49 FR 22330, May 29, 1984), or 1991 Recovery Plan. The Draft Revised Recovery Plan concludes that regulatory mechanisms are adequate to address the threats facing the Utah prairie dog with the species' threatened status under the Act (Service 2010, pp. 1.7–9 to 1.7–12).

Downlisting

In 1984, following a petition from UDWR to delist the Utah prairie dog, we analyzed the best available information regarding the species' population and threat factors, and determined that the species should be downlisted to threatened status (49 FR 22330). In our 2007 finding, we determined that there was not substantial information indicating that uplisting the Utah prairie dog to endangered may be warranted. Since our 2007 finding, we have reevaluated the population status and threats to the species. As previously described (see “Current Distribution and Abundance” section above), the Utah prairie dog population is considered to be stable to increasing on a rangewide basis and, therefore, we believe that the current status of the species as threatened, as opposed to being uplisted to endangered, is not placing the species in danger of extinction. Thus, we conclude that information regarding the effects of the species' regulatory status as threatened under the Act does not indicate that uplisting to endangered may be warranted.

Special 4(d) Rule

The special 4(d) rule (56 FR 27438, June 14, 1991) for Utah prairie dogs allows regulated take of Utah prairie dogs on private agricultural lands where damage from prairie dogs is observed (see *E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species* below). Although the current 1991 rule exempts take of up to 6,000 Utah prairie dogs annually, the actual number of prairie dogs taken during the period 1985–2009 did not exceed 1,760 animals annually (UDWR 2010c, entire). Since 1985, an average of 864 animals has been taken annually, representing an average of 2.5 percent, and never more than 5.3 percent, of the total rangewide estimated population (UDWR 2010c, entire). We have implemented the 4(d) rule for over 25 years, and Utah prairie

dog populations continue to remain stable to increasing (see “Current Distribution and Abundance” section above), indicating that the special 4(d) rule is not placing the species in danger of extinction.

Recovery Plan and Interim Conservation Strategy

We agree that the 1991 Recovery Plan is in need of an update. In our 2007 90-day finding we indicated that efforts to revise the 1991 Recovery Plan were underway. Since the 2007 finding, we published a notice of availability for the Draft Revised Recovery Plan on September 17, 2010 (75 FR 57055); we expect to complete the revised Recovery Plan in 2011. This new plan updates and replaces both the 1991 Recovery Plan and Interim Conservation Strategy.

With respect to the Petitioners' concerns, the Draft Revised Recovery Plan's population recovery criteria are to achieve counts of 1,000 adult Utah prairie dogs in each recovery unit—this is a higher number than envisioned by the 1991 Recovery Plan and is based on current biological information regarding Utah prairie dog densities and reproductive rates (Service 2010, p. 3.1–7). The Draft Revised Recovery Plan still envisions the use of translocations, enhanced by improved techniques, as an important component of Utah prairie dog recovery efforts (Service 2010, p. 2.3–4). However, the 2010 Draft Revised Recovery Plan places increased emphasis on protecting Utah prairie dogs on private lands where willing landowners may be interested (Service 2010, pp. 2.3–2 to 2.3–3). Although the Petitioners claim there was a lack of recovery efforts on private land, we have taken significant steps to conserve prairie dogs on private lands, including the use of the Safe Harbor Agreement (SHA) program, conservation easements, conservation banks, and the habitat credit and exchange program. We will briefly discuss each of these tools in the next several paragraphs.

The SHA program promotes voluntary agreements between the Service and private or other non-Federal property owners whose actions contribute to the recovery of Utah prairie dogs. Prior to our 2007 90-day finding, we entered into three SHAs covering 97 ha (240 ac) of occupied and unoccupied habitat within the Paunsaugunt and Awapa Plateau recovery units (Service 2005b, entire; Service 2005c, entire; Service 2006, entire). As of 2010, two more SHAs are in place with private landowners, covering an additional 400 ha (990 ac) of Utah prairie dog habitat. In addition, a rangewide programmatic SHA was completed in 2009,

administered by Panoramaland Resource Conservation and Development Council (2009, entire) (Service 2010, p. 1.9–4), to help facilitate the completion of additional SHAs. The SHA program not only facilitates Utah prairie dog conservation efforts on private lands, but also increases the habitat that is actively managed for the species while the landowners are enrolled in the program.

Conservation banks, another recovery effort on private lands, are a means to collectively provide mitigation in an effective manner to offset the impacts of habitat loss. In our 2007 90-day finding, we discussed one approved conservation bank: The 2005 SITLA conservation bank located on Parker Mountain within the Awapa Plateau recovery unit and totaling approximately 307 ha (758 ac). Since then, a second conservation bank was approved in 2009 in the West Desert recovery unit: The Little Horse Valley conservation bank is an 89-ha (220-ac) parcel owned by Iron County (Service 2010, p. 1.9–5). Other conservation banks are in the initial stages of development (Service 2010, p. 1.9–5). Our Draft Revised Recovery Plan sets a goal of protecting 2,023 ha (5,000 ac) of occupied habitat in conservation banks within each recovery unit (Service 2010, p. 3.1–6). The SITLA and Little Horse Valley conservation banks alone represent 15 percent and 4 percent, respectively, of the protected habitat acreage goal in the Awapa and West Desert recovery units.

The Petitioners assert there is a lack of agency personnel and resources to implement the (1991) Recovery Plan and the Interim Conservation Strategy (Forest Guardians *et al.* 2003, p. 147); however, they do not quantify this assertion with any examples or information regarding how lack of personnel adversely affect the prairie dog. As government agencies, we are required to work within our allocated annual budgets. However, despite funding limitations, the Utah prairie dog recovery program is moving forward with several significant actions to further conservation of the species. For example, the BLM implements Utah prairie dog habitat management projects; supports annual plague treatments; and conducts and funds plague, population, and habitat monitoring and research. The Dixie National Forest dusts Utah prairie dog colonies to reduce plague (over 295 ha (730 ac) were treated in 2009); conducts habitat improvement projects; and manages translocation sites (USFS 2009, entire). Bryce Canyon National Park implements habitat restoration projects;

monitors for plague; and hosts Utah prairie dog research efforts. Additionally, the Park conducts outreach programs with local communities, including hosting the first Utah Prairie Dog Day in 2010. In summary, there have been major efforts made within the Utah prairie dog recovery program by all of the Federal agencies involved.

Overall, the Utah Prairie Dog Recovery Plan, and actions within the plan, are not contributing to declines of the Utah prairie dog. If anything, the 1991 Recovery Plan, Interim Conservation Strategy, and 2010 Draft Revised Recovery Plan show a clear progression in our understanding of Utah prairie dog ecology and our ability to address threats to the species. For example, we have improved in our understanding and ability to manage plague outbreaks. We continue to improve translocation techniques and success rates. In addition, we have increased our efforts to work with private landowners to conserve Utah prairie dog habitats. The species' long-term population trend is stable to increasing, indicating that recovery efforts by all of our partners are working to achieve the criteria set forth in the recovery plans.

Federal Land Management Policies

The Petitioners contend that Federal land management policies facilitate Utah prairie dog habitat loss and degradation (Forest Guardians *et al.* 2003, pp. 119–139). They primarily reference 1997 BLM land management plans, but do not provide any evidence that these policies have resulted in the decline of Utah prairie dogs to the point where the species should be listed as endangered. In addition, we concluded in A. Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range that the information provided by the petition and in our files does not indicate that threats from land use activities on these Federal lands rise to the level at which they may put the species in current danger of extinction throughout all or a significant portion of its range.

Because the Utah prairie dog is already listed as threatened, the Federal land management agencies (*i.e.*, BLM, USFS, National Park Service (NPS)) review all proposed land use actions with the Service through consultation under section 7(a)(2) of the Act to ensure that actions will not jeopardize the species, and to minimize effects through implementation of conservation measures and terms and conditions. For example, the BLM and USFS are in the process of revising their land

management plans. Through these revisions and associated section 7 consultation processes, the agencies are committed to conservation measures that protect Utah prairie dogs and their habitat from various land use activities (USFS 1986, pp. iv–20 to iv–21, iv–33; BLM 2008b, Appendices 10, 11, 14; BLM 2008c, p. 62, Appendices 1, 2, 9).

Similarly, we completed a programmatic consultation with APHIS-Wildlife Services under section 7 of the Act, to ensure that grasshopper control actions will not have adverse effects on listed species, including Utah prairie dogs. The consultation contains required conservation measures to protect the species, including a 1.0-mi (1.6-km) buffer zone around occupied Utah prairie dog habitat (USDA 2005, p. 12).

While the Petitioners also are concerned with APHIS-Wildlife Services' prairie dog control activities (Forest Guardians *et al.* 2003, pp. 140–145), we have received application for and approved only one permit to control Utah prairie dogs on private agricultural land adjacent to a parcel of land protected under a conservation easement. The approval of this permit will not endanger the Utah prairie dog because of its limited scope and the fact that the permitted take is limited to the number of animals that exceed the baseline population size.

The Petitioners are concerned that the Environmental Protection Agency's labeling for toxicants and fumigants is not adequate for Utah prairie dog protection (Forest Guardians *et al.* 2003, p. 144); however, these chemicals are not registered for use on Utah prairie dogs. We do not currently allow toxicants or fumigants to be used as lethal control methods for Utah prairie dogs and no information exists in our files or in the petition indicating that use of these chemicals is occurring illegally other than in isolated instances.

All Federal agencies are obligated by section 7(a)(1) of the Act to use their authorities to conserve and recover listed species. Because the Utah prairie dog is a threatened species, section 7(a)(1) of the Act is applicable. The BLM, USFS, and NPS are part of the Utah Prairie Dog Recovery Team and routinely conduct Utah prairie dog recovery efforts (see the "Recovery Plan and Interim Conservation Strategy" section above).

In summary, we agree that the Utah prairie dog is impacted by a variety of Federal land use activities, and that these are in part why the species is listed as threatened; however, as discussed in A. Present or Threatened Destruction, Modification, or

Curtailed its Habitat or Range above, these activities do not put the species in danger of extinction. Thus, we conclude that the information regarding the effects of Federal land management policies does not indicate that uplisting to endangered may be warranted.

Section 10 Habitat Conservation Plans

In our 2007 90-day finding, we discussed the Iron County HCP, the Garfield County HCP (never finalized), and an additional HCP (now called the Golf Course HCP) (finalized in 2007). In the section of this finding entitled A. Present or Threatened Destruction, Modification, or Curtailed of its Habitat or Range, we again conclude that the information regarding the effects of urban development and the associated HCPs does not indicate that uplisting to endangered may be warranted.

Summary of Factor D

Federal regulatory mechanisms apply in whole or in part to threats described in the sections discussing Factors A, B, C, and E. We conclude in this finding that we do not have substantial information from the Petitioners or in our files that indicates that those threats, as managed under current regulatory mechanisms, rise to the level that places the species in current danger of extinction. We have supplemented this section with new information since our 2007 90-day finding, and our evaluation continues to support our conclusion. Therefore, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that uplisting from threatened to endangered under the Act may be warranted due to inadequate regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Information Provided in the Petition

The Petitioners state that rodent control efforts, the Utah prairie dog translocation program, and drought present significant threats to Utah prairie dogs. The petition cites legal take under the special 4(d) rule (50 CFR 17.40(g)) and ongoing illegal poisoning and shooting as endangering the species (Forest Guardians *et al.* 2003, pp. 161–162). In particular, the Petitioners point out that control of Utah prairie dogs under the special 4(d) rule has resulted in legal take of 14,002 prairie dogs (as of 2003) and suggest that annual take levels may be contributing to population

declines (Forest Guardians *et al.* 2003, pp. 162–163). The petition alleges that any illegal poisoning that occurs increases the magnitude of permitted take (Forest Guardians *et al.* 2003, p. 165). The petition calls the translocation program a failure, stating that translocations have not resulted in an increase of Utah prairie dog populations on public lands, and have resulted in a loss of animals on private lands (Forest Guardians *et al.* 2003, p. 166). The petition points out that many translocation sites do not meet Interim Conservation Strategy vegetation guidelines, and that Utah prairie dogs translocated to the Adams Well site have lost weight, thus making them less likely to survive through winter (Forest Guardians *et al.* 2003, pp. 170–184). The petition states that, although drought is a naturally occurring phenomenon, continuing livestock grazing during drought conditions exacerbates the effects of drought on Utah prairie dogs (McDonald 1993, pp. 16–17; Forest Guardians *et al.* 2003, p. 185).

Evaluation of Information Provided in the Petition and Available in Service Files

The threat addressed in the petition regarding the relationship of drought and livestock grazing regimes on Utah prairie dog habitat is discussed under A. Present or Threatened Destruction, Modification, or Curtailed of its Habitat or Range. We acknowledged that improper grazing can impact the species during drought conditions in site-specific areas, but the information presented by the Petitioners and in our files does not indicate that this warrants uplisting to endangered status. Illegal shooting is discussed under B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes. Legal take occurring in compliance with the special 4(d) rule (50 CFR 17.40(g)) is discussed under D. Inadequacy of Existing Regulatory Mechanisms. We concluded that these threats are all part of the reason that the species remains listed as threatened; however, none of these factors rise to the level that places the Utah prairie dog currently in danger of extinction (see “Livestock Grazing” under “A., Present or Threatened Destruction, Modification, or Curtailed of its Habitat or Range”; see “Illegal shooting” under “B., Overutilization for Commercial, Recreational, Scientific, or Educational Purposes”; and see “Special 4(d) Rule” under “D., Inadequacy of Existing Regulatory Mechanisms”).

The translocation program is discussed in the next several

paragraphs, including additional information evaluated since our 2007 90-day finding. Translocation of Utah prairie dogs is used to increase the numbers of prairie dog colonies in new locations across the species’ range. Translocation of Utah prairie dogs occurs within and between recovery units in part to address the species’ limited levels of genetic diversity (Service 1991, p. 19; Roberts *et al.* 2000, p. 45). Translocation efforts include habitat enhancement at selected translocation sites and live trapping of Utah prairie dogs from existing colonies to move them to the selected translocation sites.

We acknowledge that the translocation program was historically not as successful as predicted. As translocation methodology has improved (Jacquart *et al.* 1986, pp. 54–55; Coffeen 1989, p. 7; Truett *et al.* 2001, pp. 868–869), so has our success rate (Service 2010, pp. 1.9–1 to 1.9–3). For example, 12 of 15 (80 percent) post-1986 translocation sites still had prairie dogs present in 1992, whereas only 5 of 23 (22 percent) of pre-1986 translocation sites were still occupied by prairie dogs in 1992. Furthermore, by 1992, post-1986 translocation sites had a significantly higher number of prairie dogs per site (840 animals) versus pre-1986 translocation sites (157 animals). By 2008, 23,359 Utah prairie dogs had been translocated from private to public lands (McDonald 1993, p. 39; Table 4, p. 42; Bonzo and Day 2003, pp. 14–16; Brown pers. comm. 2009). As of 2009, 24 translocation sites were occupied: Four of 8 sites in the Awapa Plateau recovery unit; 6 of 8 sites in the Paunsaugut recovery unit; and 14 of 20 sites in the West Desert recovery unit (Brown pers. comm. 2009) (these are not necessarily the same sites described in the 1980s and 1990s, as new translocation sites are sometimes developed while some old sites may no longer be in use). While translocation success and survival rates were historically low, they have improved over time and it is noteworthy that translocation has resulted in the establishment of new colonies.

The Service’s 2006 Recommended Translocation Procedures define specific procedures for locating translocation sites, preparing the sites, live trapping, handling, transporting, releasing, monitoring, and managing animals (Service 2010, Appendix D). For example, current translocation procedures include restrictions on the timing of movements for certain age and sex categories (*i.e.*, early translocation of males to aid in establishing burrows for subsequent females and juveniles

released in late summer) (Jacquart 1986, p. 54). Supplemental food and water are used at new translocation sites to increase survival because increased energy expenditures are incurred during the trapping and transport process; increased stimuli of a new environment; increased burrowing activity upon release; and increased vigilance of newly released prairie dogs (Truett *et al.* 2001, p. 869). We also use retention cages to keep the newly translocated prairie dogs at the intended release areas and exclude predators (Truett *et al.* 2001, pp. 868–869). Furthermore, in an effort to minimize the potential for plague transmission between colonies, prairie dogs are not translocated into already-established colonies; animals are not captured and moved from any colonies where plague is suspected; all animals are treated with an insecticide called Deltamethrin (Delta dust) prior to release at translocation sites; and translocation colonies are provided additional treatments of Delta dust as needed. These safeguards appear to be further improving translocation success.

We conclude, based on the long-term stable-to-increasing Utah prairie dog rangewide population trends, that there is no indication that translocations have moved the species' trajectory toward endangerment, despite the mortality of individual animals. Overall, translocations have resulted in the establishment of new Utah prairie dog colonies on Federal lands. Translocations will continue to play an important role in recovery of the Utah prairie dog (Service 2010, p. 2.3–4). Thus, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that uplisting from threatened to endangered under the Act may be warranted due to other natural or manmade factors affecting the species' continued existence.

Finding

In summary, we agree with the Petitioners' overall identification of threats to the Utah prairie dog. Our 2010 Draft Revised Recovery Plan identifies all of the threats raised by the petitioners, concluding that urbanization and plague remain the top-tier threats to the species (Service 2010, pp. 2.3–1 to 2.3–2). However, the petition does not present substantial information indicating that the level of threats to the species may place the Utah prairie dog in current danger of extinction. Long-term population trends since the downlisting of Utah prairie dog in 1984 remain stable to increasing,

indicating that the threats, while they still exist, are not negatively changing the population trends. In addition, the species is already listed as threatened under the Act, and is already subject to, and receives protection from, the regulatory mechanisms of the Act. As stated in the "Background" section, a threatened species is defined as a species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The level of threats facing Utah prairie dogs indicates that the species should continue to be listed as threatened. This decision is consistent with our original "not substantial" determination when we first evaluated and presented our findings in 2007 (72 FR 7843).

Additional Findings in Compliance With Court Order

On September 28, 2010, the U.S. District Court for the District of Columbia ordered the 2007 90-day finding to be vacated and remanded to the Service for two reasons:

(1) The Service failed to explain how the reduction in the Utah prairie dog's historical range did not indicate that reclassifying the species as endangered may be warranted, and failed to explain how the reduction in the Utah prairie dog's historical range does not constitute a "significant portion of the species' range."

(2) The Service failed to explain whether the listing factors' cumulative effect indicates that reclassifying the Utah prairie dog as endangered may be warranted.

The following sections are incorporated into this 90-day finding in order to comply with the Court's order. Below we explain our listing process, outline the information provided in the petition, evaluate the information in the petition and available in our files, discuss our interpretation of both "significant portion of the range" and "cumulative effect," and summarize our findings on these topics.

Significant Portion of the Range

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of

the petition, and publish our notice of this finding promptly in the **Federal Register**.

Section 4(b)(3)(B) of the Act requires that, for any petition that is found to contain substantial scientific or commercial information that listing or reclassifying the species may be warranted, we conduct a status review and make a finding within 12 months of the date of receipt of the petition. In the 12-month finding, we determine whether the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted but precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. We must publish these 12-month findings in the **Federal Register**.

At the 12-month finding stage, we consider the five factors in assessing whether a petitioned entity is threatened or endangered throughout all of its range. If we determine that the petitioned entity does not meet the definition of a threatened or endangered species throughout all of its range, we must next consider in the 12-month finding whether there are any significant portions of the range where the petitioned entity is in danger of extinction or is likely to become endangered in the foreseeable future.

A portion of a species' range is significant if it is part of the current range of the species and it contributes substantially to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

In determining whether a species is threatened or endangered in a significant portion of its range, we first identify any portions of the current range of the species that warrant further consideration. The range of a species can theoretically be divided into portions an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be significant and (2) the species may be currently in danger of extinction. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration.

Moreover, if any concentration of threats applies only to portions of the species' range that are not significant, such portions will not warrant further consideration.

If we identify portions that warrant further consideration, we then determine whether the species is threatened or endangered in these portions of its range. Depending on the biology of the species, its range, and the threats it faces, the Service may address either the significance question or the status question first. Thus, if the Service considers significance first and determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there. Likewise, if the Service considers status first and determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant.

The above description outlines our usual process for considering significant portions of the range in 12-month findings. To comply with the Court's order to explain both how the reduction in the Utah prairie dog's historical range does not constitute a "significant portion of the species" range, and how the reduction in the Utah prairie dog's historical range does not indicate that reclassifying the species as endangered may be warranted, we include the following evaluation.

Information Provided in the Petition

The Petitioners assert that the Utah prairie dog should be reclassified as endangered within its historical range (Forest Guardians *et al.* 2003, p. 1). As noted in our discussion under A. Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range, they cite that the historical area of the species declined 98.4 percent (Forest Guardians *et al.* 2003, p. 2). The Petitioners also state that Utah prairie dog populations decreased from 95,000 individuals historically to a count of 4,217 in 2001. The Petitioners note that the species' distribution was much larger prior to the poisoning campaigns in the 1900s (Forest Guardians *et al.* 2003, p. 16), and was then further impacted in the 1960s—resulting in the species' extirpation from significant portions of their historical range (Forest Guardians *et al.* 2003, p. 17). They further assert that these reductions in range continue to occur (Forest Guardians *et al.* 2003, p. 4).

Evaluation of Information Provided in the Petition and Available in Service Files

When analyzing whether a portion of a species' range is significant, we examine the current status of a species, which necessitates examining the species in its current range. Lost historical range, by itself, cannot comprise a significant portion of a species' range as we define it (above) based on our current practice, but is relevant to the analysis of the current and future viability of the species. Therefore, we cannot list a species based merely on the fact that it has lost historical range (however large that loss might be). However, the effect of lost historical range on the viability of the species could potentially prompt us to list a species because the loss of historical range has made the species vulnerable to the point that the entire species is at risk of extinction. In this case, we are not considering listing (or reclassifying) a species based on whether or not it is "endangered" or "threatened" in its lost historical range, but based on whether it is "endangered" or "threatened" throughout its current range because that loss of historical range is so substantial that it undermines the viability of the species as it exists today.

We acknowledge that historical Utah prairie dog habitat was lost; this factor was considered in our May 29, 1984, reclassification of the species from endangered to threatened (49 FR 22330) and in the Draft Revised Recovery Plan (Service 2010, p. 1.3–1). The primary reason for the reduction in historical range was widespread Utah prairie dog poisoning and shooting campaigns (Service 2010, p. 1.3–1); however, these poisoning campaigns are no longer active.

Today, although the species' range is reduced from historical times, the species' long-term (since 1976) population trend is considered stable to increasing (Figure 1) (UDWR 2010a, entire). Thus, we conclude that the viability of the remaining population is not compromised to the point that the species is currently in danger of extinction.

Both the 1991 Recovery Plan and the Draft Revised Recovery Plan for Utah prairie dog support this justification (Service 2010, pp. 3.2–7 to 3.2–8). In the Draft Revised Recovery Plan, we considered the species' historical range, current range, and recovery needs. Our designation of three recovery units within the species' current range is based on the conservation concepts of representation, redundancy, and

resiliency (Service 2010, pp. 3.2–7 to 3.2–8). These recovery units are individually necessary to conserve the genetic, demographic, and ecological diversity necessary for the long-term sustainability of Utah prairie dogs.

However, neither the 1991 Recovery Plan nor the Draft Revised Recovery Plan indicates that achieving Utah prairie dog recovery will require their lost historical range (*i.e.*, areas outside of the three designated recovery units) to be repopulated. In addition, because widespread Utah prairie dog poisoning campaigns no longer occur in the species' habitat, we do not anticipate similar future losses of prairie dog populations. Thus, we conclude that the reduction of the Utah prairie dog's historical range has not made the species vulnerable to the point that the entire species may be currently in danger of extinction.

In summary, the U.S. District Court for the District of Columbia asked us to explain how the reduction in the Utah prairie dog's historical range does not constitute a "significant portion of the species' range," and how the reduction in the Utah prairie dog's historical range does not indicate that reclassifying the species as endangered may be warranted. As discussed above, for the purpose of giving meaning to "significant portion of the range" in the context of a listing determination, we consider a portion of the species range to be significant if it is part of the current range of the species and it contributes substantially to the representation, resiliency, or redundancy of the species. The Utah prairie dog's lost historical range is not a portion of the species' current range, does not describe the status of the species where and as it exists at the time of our listing determination, and, as such, does not contribute to the representation, resiliency, and redundancy of the species that we consider when making a listing determination. Therefore, the Utah prairie dog's lost historical range does not constitute a "significant portion of the range." Further, as previously explained, we have determined that the reduction in the Utah prairie dog's historical range does not indicate that reclassifying the species as endangered may be warranted, because we believe that the effects of the loss of historical range of the species does not place it in danger of extinction such that reclassifying the Utah prairie dog from threatened to endangered may be warranted.

Cumulative Effects of Listing Factors Information Provided in the Petition

The Petitioners assert that Utah prairie dog viability is cumulatively impacted by all five of the listing factors. They state that activities such as destruction and degradation of private and public lands, inadequate habitat conservation planning, illegal shooting and poisoning, an ineffective translocation program, and plague cumulatively impact Utah prairie dog persistence and, therefore, necessitate the reclassification of the species from threatened to endangered (Forest Guardians *et al.* 2003, p. 186).

Evaluation of Information Provided in the Petition and Available in Service Files

We acknowledge that the Utah prairie dog is threatened by several factors, most notably habitat loss and degradation from urbanization, and plague (Service 2010, p. 1.8–3). Ongoing threats, as described in the discussion of Factors A through E, include livestock grazing, road construction, OHV and recreational use, habitat loss from agricultural and urban land conversions, illegal shooting, and plague. The species is listed as threatened because of these factors.

Throughout this finding, we clearly identified the effects of each of these factors to the Utah prairie dog. In many cases, we identified that the effects are often localized to specific areas within the species' range. For example, the threat of urbanization is greatest in the West Desert recovery unit (see "Habitat Loss from Agricultural and Urban Land Conversion" under "A., Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range"); albeit it is one of the largest overall threats to the species. Livestock grazing can be a threat to the species in site-specific areas where improper grazing negatively affects habitat conditions (see "Livestock Grazing" under "A., Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range"). Road construction, OHV use, and recreation may have effects to individuals or colonies that occur adjacent to the roadways, trails, or play areas; however, these are localized areas and do not result in population-level effects (see "Road Construction, Off-Highway Vehicle Use, and Recreation" under "A., Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range"). Furthermore, there is an increased planning effort on Federal lands toward directing these activities away from Utah prairie dog habitats (Service 2010,

p. 1.7–4). Existing and anticipated oil and gas development occurs on only a small percentage of the species habitat, and even then effects are minimized by Federal minimization and mitigation requirements that avoid impacts to suitable prairie dog habitats (see "Oil, Gas, and Mineral Development" under "A., Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range"). Illegal shooting occurs in some instances, but we have only documented isolated incidents. Illegal shooting is not widespread across the species' range (see "B., Overutilization for Commercial, Recreational, Scientific, or Educational Purposes"). Similarly, predation is a natural occurrence in Utah prairie dog colonies. Effects are normally realized in only isolated instances at highly fragmented colonies or at new translocation sites (see "C., Disease or Predation").

We determined that none of these threats, by themselves, act to place the species in current danger of extinction. Although most of the threats we analyzed have localized distributions, it is possible that more than one threat may act together to cause the local reduction or extirpation of a colony. However, at a rangewide level, Utah prairie dog population trends are stable to increasing, indicating that the factors identified above, both individually and cumulatively, have no broad-scale effects that threaten the species to the extent that it is currently in danger of extinction.

Plague occurs across the species' entire range, and could certainly act cumulatively with other threat factors to cause individual colonies to be reduced in size or extirpated (see "C., Disease or Predation"). For example, if habitat is degraded from overgrazing or wildfire, it may hinder the ability of prairie dogs to reestablish a colony that is reduced or eliminated by plague.

However, despite the fact that plague and the other threats to the species have occurred for decades, and sometimes act cumulatively to affect individual colonies or complexes, the population trend of the Utah prairie dog remains stable to increasing across the species' range. Therefore, we conclude that the cumulative effects of these factors do not threaten the species to the extent that reclassifying the species from threatened to endangered may be warranted.

On the basis of our determination under section 4(b)(3)(A) of the Act, we conclude that the petition does not present substantial scientific or commercial information to indicate that reclassifying the Utah prairie dog

(*Cynomys parvidens*) under the Act as an endangered species may be warranted at this time. Although we will not review the status of the species at this time, we encourage interested parties to continue to gather data that will assist with the conservation of the Utah prairie dog. If you wish to provide information regarding the Utah prairie dog, you may submit your information or materials to the Field Supervisor, Utah Ecological Services Field Office (see **ADDRESSES**), at any time.

References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Utah Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the Utah Ecological Services Field Office (see **ADDRESSES**). The primary authors of the 90-day finding published on February 21, 2007, were the staff members of both the Utah Ecological Services Field Office and the Colorado Ecological Services Field Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 7, 2011.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–15283 Filed 6–20–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0044; MO 92210–0–0009]

RIN 1018–AW86

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sonoma County Distinct Population Segment of the California Tiger Salamander (*Ambystoma californiense*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revision and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the

reopening of the comment period on our August 18, 2009, proposed designation of critical habitat for the Sonoma County Distinct Population Segment of the California tiger salamander (*Ambystoma californiense*) under the Endangered Species Act of 1973, as amended. We also announce revisions to the proposed critical habitat unit. In this revised proposal, we add 4,945 ac (2,001 ha) to the proposed critical habitat unit in the general area of Roblar Road, based on peer review and other information submitted in the previous public comment period. In total, we are proposing to designate approximately 55,800 acres (ac) (22,580 hectares (ha)) of land as critical habitat for the Sonoma California tiger salamander. We are reopening the comment period to allow interested parties an opportunity to comment on the revised proposed critical habitat. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES: We will consider public comments received on or before July 5, 2011. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R8-ES-2009-0044.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R8-ES-2009-0044; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS-2042 PDM; Arlington, VA, 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Susan Moore, Field Supervisor, or Karen Leyse, Listing Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, CA 95825; telephone 916-414-6600; facsimile 916-414-6713. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this revised proposed rule will be based on the best scientific data available and will be as accurate and as effective as possible. We will accept written comments and information during this reopened comment period on our amended proposed designation of critical habitat for the Sonoma County Distinct Population Segment (Sonoma DPS) of the California tiger salamander that was published in the **Federal Register** on August 18, 2009 (74 FR 41662), our proposed revised designation (76 FR 2863; January 18, 2011), our draft economic analysis (DEA) of the proposed designation, and the amended required determinations provided in the January 18, 2011, **Federal Register** (76 FR 2863) document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning the addition of the area previously not identified as meeting the criteria for critical habitat, but which now is being proposed as critical habitat. The additional area is located along Roblar Road west of the City of Cotati and State Route 116.

If you submitted comments or information on the proposed rule or revised proposed rule (74 FR 41662; August 18, 2009, or 76 FR 2863; January 18, 2011) during any of the previous comment periods, please do not resubmit them. These comments are included in the public record for this rulemaking, and we will fully consider them in the preparation of our final determination. You may submit your comments and materials concerning this revised proposed rule, the DEA associated with the revised proposed critical habitat designation, and the amended required determinations by one of the methods listed in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hard copy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hard copy comments on <http://www.regulations.gov>. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation

used to prepare this notice, will be available for public inspection at <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service (Service), Sacramento Fish and Wildlife Office (see the **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed designation of critical habitat (74 FR 41662) and the DEA on the Internet at <http://www.regulations.gov> at Docket No. FWS-R8-ES-2009-0044, or by mail from the Sacramento Fish and Wildlife Office (see the **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this revised proposed rule. Additional background information can be found in the previously proposed revised critical habitat notice (76 FR 2863; January 18, 2011). Based on peer review information, we now propose a revision to the proposed critical habitat unit for the Sonoma County DPS of the California tiger salamander; accordingly, approximately 55,800 acres (ac) (22,580 hectares (ha)) in Sonoma County, California, meet the definition of critical habitat. The proposed revision adds approximately 4,945 ac (2,001 ha) to the proposed designation.

Revisions to Proposed Critical Habitat

In this notice, we are revising the proposed unit (Santa Rosa Plain Unit), as described in the January 18, 2011 (76 FR 2863), proposed rule based on peer review and other information submitted in the previous public comment period. The information noted that there are three known breeding sites for the Sonoma County DPS of the California tiger salamander in the Roblar Road area. The peer reviewer stated that aerial photographs were reviewed and reconnaissance visits to the area were performed. The peer reviewer commented that the Roblar Road area likely consists of a California tiger salamander metapopulation with multiple known breeding sites. The peer reviewer recommended that we include the area within a minimum of 1.3 miles (mi) (2 kilometers (km)) from each of the three Roblar breeding sites as critical habitat. The 1.3-mi (2-km) distance is based on observations of California tiger salamanders from the nearest breeding ponds (Sweet 1998).

The Roblar Road area contains the physical and biological features essential to the conservation of the species, and these features may require special management considerations or

protection. These features include: ponded fresh water habitat inundated during the appropriate timeframe and for the appropriate duration; upland habitats adjacent and accessible to and from ponds that contain underground refugia; and upland dispersal habitat between occupied locations that allow for movement between ponded or upland sites. Based on life history, dispersal capabilities, and habitat use by the species, we consider this additional area to have been occupied by the species at the time of listing. However, even if this additional breeding area was not occupied at the time of listing, we consider the Roblar Road area essential for the conservation of the species, based on the species' limited distribution within fragmented habitat within the Santa Rosa Plain area.

The proposed addition totals approximately 4,945 ac (2,001 ha). Table 1 below shows the approximate area and landownership within the unit. We are revising the final economic analysis (FEA) to include this additional area in the analysis, utilizing the same methodology to estimate economic impacts employed in the DEA. The FEA will contain an addendum explaining these anticipated economic costs and impacts.

TABLE 1—PROPOSED CRITICAL HABITAT

[Area estimates reflect all land within the critical habitat unit boundary]

Santa Rosa Plain Unit	
Land ownership by type	Size of area in acres (hectares)
Federal	0 (0)
State	984 (398)
City	805 (326)
County	633 (256)

TABLE 1—PROPOSED CRITICAL HABITAT—Continued

[Area estimates reflect all land within the critical habitat unit boundary]

Santa Rosa Plain Unit	
Land ownership by type	Size of area in acres (hectares)
Tribal	264 (107)
Private	53,114 (21,494)
Total	55,800 (22,580)

Note: Area sizes may not sum due to rounding.

In summary, the purpose of this revision to the proposed critical habitat is to better delineate the areas that contain the physical or biological features essential to the conservation of the species and that meet the definition of critical habitat for the California tiger salamander in Sonoma County. This revision is based on recent documentation of adult California tiger salamanders and known breeding ponds in the vicinity of Roblar Road.

Author(s)

The primary authors of this notice are the staff members of the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 74 FR 41662, August 18, 2009, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Critical habitat for the California tiger salamander (*Ambystoma californiense*) in Sonoma County at § 17.95(d) is proposed to be amended by revising the heading, paragraph (53)(i), and paragraph (56) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

California Tiger Salamander (*Ambystoma californiense*)

* * * * *

California Tiger Salamander (*Ambystoma californiense*) in Sonoma County

* * * * *

(53) * * *

(i) Standing bodies of fresh water (including natural and manmade (e.g., stock) ponds, vernal pools, and other ephemeral or permanent water bodies) that typically support inundation during winter and early spring and hold water for a minimum of 12 consecutive weeks in a year of average rainfall.

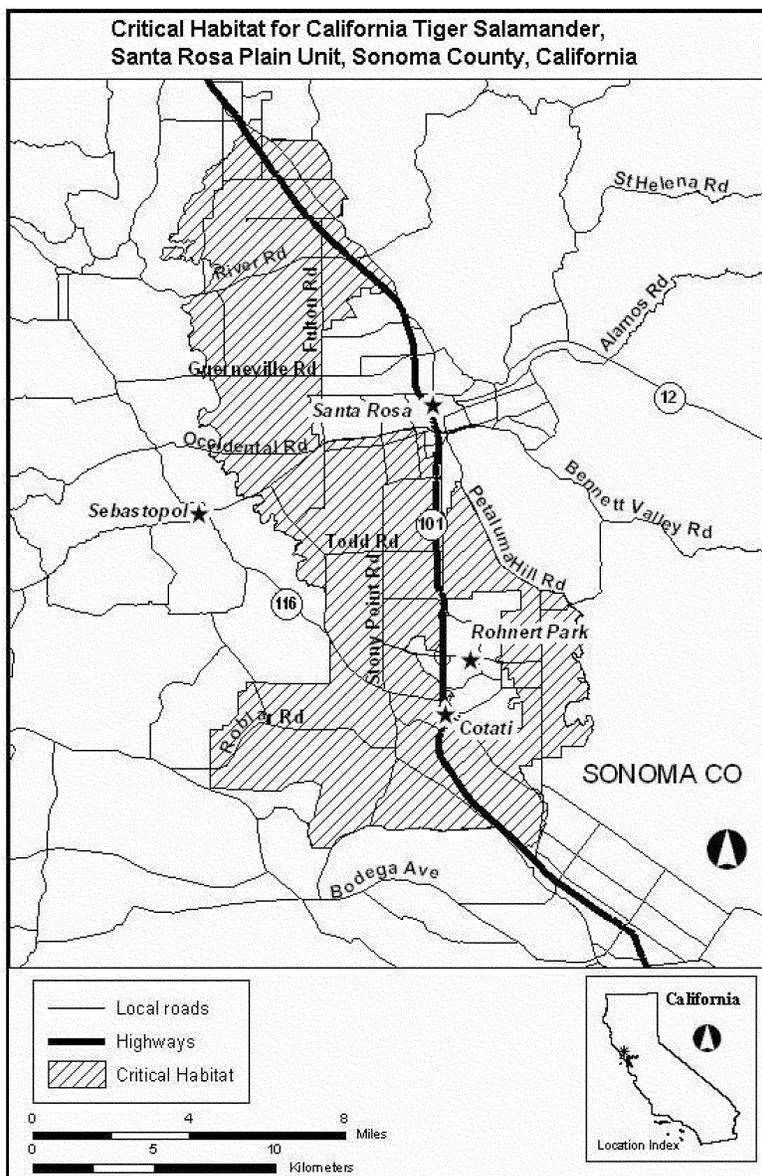
* * * * *

(56) Santa Rosa Plain Unit, Sonoma County, California.

(i) [Reserved for textual description of the Santa Rosa Plain Unit, Sonoma County, California.]

(ii) *Note:* Map of Santa Rosa Plain Unit, Sonoma County, California, follows:

BILLING CODE 4310–55–P



* * * * *

Dated: June 13, 2011.

Rachel Jacobson,

*Acting Assistant Secretary for Fish and
Wildlife and Parks.*

[FR Doc. 2011-15403 Filed 6-20-11; 8:45 am]

BILLING CODE 4310-55-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110520295-1295-01]

RIN 0648-BA64

Atlantic Highly Migratory Species; Vessel Monitoring Systems

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

ACTION: Proposed rule; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes to require replacement of currently

required Mobile Transmitting Unit (MTU) Vessel Monitoring System (VMS) units with Enhanced Mobile Transmitting Unit (E-MTU) VMS units in Atlantic HMS fisheries; implement a declaration system that requires vessels to declare target fishery and gear type(s) possessed on board; and require that a qualified marine electrician install all E-MTU VMS units. This proposed rulemaking would remove dated MTU VMS units from service in Atlantic HMS fisheries, make Atlantic HMS VMS requirements consistent with other VMS-monitored Atlantic fisheries, provide the National Marine Fisheries Service Office of Law Enforcement (NMFS Enforcement) with enhanced communication with HMS vessels at sea. This rule would affect all HMS pelagic longline (PLL), bottom longline (BLL), and shark gillnet fishermen who

are currently required to have VMS onboard their vessels.

DATES: Comments on this proposed rule must be submitted by August 1, 2011. NMFS will hold three public hearings for this proposed rule in July 2011. For specific dates and times, see the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: The public hearings will be held in Florida, Louisiana, and New Jersey. For specific locations see the **SUPPLEMENTARY INFORMATION** section of this document.

You may submit comments, identified by 0648-BA64, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: <http://www.regulations.gov>.
- *Fax:* 301-713-1917, Attn: Michael Clark.
- *Mail:* Highly Migratory Species Management Division (SF1), 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

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

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Atlantic Highly Migratory Species Management Division and by e-mail to OIRA_Submission@omb.eop.gov, or fax to 202-395-7285

FOR FURTHER INFORMATION CONTACT: Greg Fairclough, (phone: 727-824-5399, fax: 727-824-5398) or Michael Clark (phone: 301-713-2347, fax: 301-713-1917).

Copies of this proposed rule and related documents, including the Regulatory Impact Review and Initial Regulatory Flexibility Analysis, can be obtained by writing to the HMS Management Division, 1315 East-West Highway, Silver Spring, MD 20910, visiting the HMS Web site at <http://www.nmfs.noaa.gov/sfa/hms/>, or by

contacting Greg Fairclough or Michael Clark.

SUPPLEMENTARY INFORMATION:

Background

Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Atlantic Tunas Conservation Act (ATCA). Under the MSA, NMFS must ensure consistency with the National Standards and manage fisheries to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. Under ATCA, the Secretary of Commerce is required to promulgate regulations, as necessary and appropriate, to implement measures adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The implementing regulations for Atlantic HMS are at 50 CFR part 635.

Maintaining NMFS's VMS monitoring program ensures compliance with both international and domestic requirements while facilitating enforcement of Atlantic HMS fisheries regulations. As a Contracting Party of ICCAT, the United States is required to collect biological statistics for research purposes (fishing effort and catch) and to implement, maintain, and monitor a viable VMS program for vessels in certain Atlantic HMS fisheries. Requirements to use VMS in the PLL fishery were implemented (June 25, 2003, 68 FR 37772) prior to ICCAT Recommendation's (03-14 and 04-11) that concern VMS usage in the convention area.

In addition, NMFS issued a rule on December 24, 2003 (68 FR 74746), which required VMS operation for vessels with BLL gear onboard between 33°00' N. latitude and 36°30' N. latitude to ensure compliance with the mid-Atlantic shark closed area. This same rule extended VMS requirements for shark gillnet vessels operating during the right whale calving season. This rule was implemented in December 2003 for purposes of domestic Atlantic shark management.

Properly functioning MTU VMS units aid NMFS enforcement agents in monitoring and enforcing closed or restricted areas implemented to reduce bycatch of undersized swordfish, sharks, sea turtles, and other species necessary to comply with the Marine Mammal Protection Act (MMPA), Endangered Species Act (ESA), and National Standard 9 (bycatch and bycatch mortality reduction) of the MSA. There are numerous areas closed to fishing with PLL and BLL gear. Additionally, the location of all shark

gillnet vessels is monitored using VMS between November 15 and April 15 to protect right whales consistent with legal requirements. NMFS has implemented complementary regulations enforcing closed areas that were created by the Gulf of Mexico, Caribbean, and South Atlantic Fishery Management Councils. The effectiveness of traditional methods of monitoring and surveillance, such as vessel and aerial patrols, is increased tremendously through the addition of VMS—particularly where large geographic areas are involved. VMS has been required in various HMS fisheries since 2003.

The MTU VMS unit is currently required to report positions on an hourly basis when HMS fishing vessels carrying PLL, BLL, or shark gillnet gear are away from port. The MTU VMS units report vessel position only, and, in some instances, do not even indicate whether the unit is on and functioning properly. The MTU VMS unit technology is dated, and NMFS enforcement has reported that these units have failed to report while vessels are at sea. NMFS enforcement agents have also reported difficulty communicating with vessels when needed, such as when closed areas change due to an emergency rule. The newer E-MTU VMS units use more recent technology that, in addition to reporting vessel position, allows for two-way communication. By requiring that E-MTU VMS units be professionally installed and used to replace the dated MTU VMS units, NMFS will ensure that newer, more reliable, technology is in use, improve fisheries monitoring and enforcement of regulations, and provide NMFS enforcement agents with the ability to communicate directly with vessels at sea via electronic messaging and other means. With this newer technology, NMFS enforcement agents could: notify vessel operators of emergency changes to closed areas; provide notice of fishery closures in real time; inform operators of environmental disasters (oil rig fires/oil spills); send notice of dangerous weather; and receive distress or emergency transmissions.

NMFS is also proposing that, two hours prior to leaving port, fishermen provide NMFS enforcement with notice of the beginning of a fishing trip and a declaration of the target fishery and gear onboard. In addition, this proposed rule would require vessel operators to provide a minimum of three hours' advance notice of landing. Currently, vessel operators are required to turn on the VMS unit two hours before leaving port. Under this proposed rule, vessel

operators would also need to declare the species being targeted and the gear being used. Creating a fishery declaration system would facilitate enforcement and compliance monitoring. Vessels may be permitted to participate in multiple fisheries that authorize numerous fishing gears. The declaration system would provide NMFS enforcement with advance notice of the target fishery and gear possessed onboard which provides enforcement with critical information concerning which regulations apply to that particular vessel during that trip.

Any new declaration system would be compatible with the capabilities of newly required E-MTU VMS units and consistent with declaration protocols currently employed in Council-managed fisheries. Additionally, the requirement to notify NMFS enforcement at least three hours prior to returning to port provides notification that fishing activities are being completed, gear is no longer being deployed, and the vessel is transiting back to port.

Additionally, vessels with E-MTU VMS units would be able to communicate through electronic messages with shore-based fishery personnel, which could allow fishery participants to: Communicate directly with NMFS enforcement in the case of a power disruption; download updated E-MTU software without removal of the device; communicate with manufacturers to remedy malfunctions; receive required software upgrades with little interference; communicate with vessel owners and fish houses; and send distress calls to monitoring companies in the event of an emergency. Although some of these features are potentially useful functions, they are not the primary purpose of VMS and, it is important that fishermen not see them as a substitute for required safety equipment such as a properly installed and functioning Emergency Position Indicating Radio Beacon (EPIRB).

Currently, an installation and activation checklist must be submitted by the vessel owner to NMFS enforcement after installation of a VMS unit. This proposed rulemaking would require that this checklist be filled out and signed by a qualified marine electrician and returned to NMFS enforcement by the vessel owner in order to demonstrate that the unit was installed properly. The installation and activation checklist is available from NMFS.

On January 31, 2008, NMFS published in the **Federal Register** a type-approval notice listing the specifications for approved E-MTU VMS units (73 FR 5813). These type-approval notices may be updated in the future as specifications change and/or new units become approved. Currently, if an existing MTU VMS unit fails and is not able to be repaired, the vessel owner in Atlantic HMS fisheries that are subject to VMS regulations would be required to purchase and use E-MTU VMS units that are approved by NMFS.

Reimbursement funds are available for participants upgrading to E-MTU VMS units in HMS fisheries, subject to limitations. Reimbursement funds will be distributed on a first come, first served basis. Furthermore, individuals that have previously received reimbursement funds for an E-MTU VMS unit required in another fishery would not be eligible for additional funds.

Request for Comments

NMFS is requesting comments on any of the measures or analyses described in this proposed rule. Furthermore, NMFS also requests comments related to the potential economic impacts of this proposed action, including:

1. A delayed implementation date or date by which vessel owners would be required to start using E-MTU VMS units to provide participants with ample opportunity to procure a unit and have

it installed while still having the opportunity to take advantage of reimbursement funds. Currently, NMFS is considering requiring that vessel owners have an E-MTU VMS unit installed and operational within 90 days of publication of the final rule.

2. The time and costs associated with having the E-MTU VMS units installed by a qualified marine electrician.

3. The advance notice timeframes associated with the proposed hail-out and hail-in requirements (*i.e.*, the two hour notice before leaving port and the three hour notice before returning to port).

Comments on this proposed rule may be submitted via <http://www.regulations.gov>, mail, or fax. Comments may also be submitted at a public hearing (see **DATES** and **ADDRESSES**). NMFS solicits comments on this proposed rule until August 1, 2011. NMFS will hold two public hearings for this proposed rule. The hearing locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Greg Fairclough at 727-824-5399, at least 7 days prior to the meeting. The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (*e.g.*, alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose. Attendees are expected to respect the ground rules and, if they do not, they will be asked to leave the hearing.

Location	Date	Time	Address
St. Petersburg, FL	July 7, 2011	6:00–8:00 p.m. ...	NOAA, Southeast Regional Office 263 13th Ave. S., St. Petersburg, FL 33701.
New Orleans/Kenner, LA	July 13, 2011	2:00–5:00 p.m. ...	901 Airline Drive, Kenner, LA 70062.
Atlantic City, NJ	July 28, 2011	5:45–7:45 p.m. ...	Atlantic County Library System, Brigantine Branch 201 15th St. South, Brigantine, NJ 08203.

Classification

The NMFS Assistant Administrator has determined that this proposed rule is consistent with the 2006 Consolidated HMS Fishery Management Plan and its amendments, the MSA and National

Standards, and other applicable law, subject to further consideration after public comment.

This proposed rule would modify a collection-of-information requirement associated with VMS use in Atlantic

HMS fisheries subject to the Paperwork Reduction Act (PRA), and that has been approved by the Office of Management and Budget (OMB) under control number (0648-0372). The proposed modifications are subject to review and

approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. There would be 329 vessel owners (respondents) that may be affected by this collection. Public reporting burden for having the E-MTU VMS units installed by a qualified marine electrician (4 hours, one-time), submitting a checklist (completed by a qualified marine electrician) (5 minutes, one-time), and providing declaration reports before and after leaving port (5 minutes/declaration, ongoing) is estimated to result in an estimated total annual burden of 4,452 hours in the first year. A total of 48,358 responses (checklists and declaration reports) would be collected in the first year. The annual burden would decrease in subsequent years because the installation and submission of a completed checklist would be one-time burdens. Table 1 provides estimates of the number of participants affected by this collection and the financial burden associated with this action in year one and subsequent years.

Public comment is sought regarding the estimated burden hours associated with installation of the new E-MTU VMS units (4 hours per vessel). Furthermore, comments are also sought concerning whether this proposed collection of information is necessary for the proper performance of the functions of NMFS, including whether the information would have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Greg Fairclough, the Highly Migratory Species Management Division, at the **ADDRESSES** above, and by e-mail to OIRA_Submission@omb.eop.gov or fax to (202) 395-7285. Comments submitted in response to this proposed modification to an existing information collection will be summarized and/or included in the request for OMB approval of this information collection and will also be included in the public record.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

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

Environmental impacts are not expected and the action is within the scope of that previously analyzed when existing VMS requirements were implemented. This action would not directly affect fishing effort, quotas, fishing gear, authorized species, interactions with threatened or endangered species, or other relevant parameters.

NMFS has prepared an Initial Regulatory Flexibility Analysis (IRFA), as required by 5 U.S.C. 603 of the Regulatory Flexibility Act, to analyze the economic impacts that this proposed rule could have on small entities. A description of the proposed action, why it is being considered, and the legal basis for this proposed action are contained in the preamble to this proposed rule. A summary of the analysis follows. A copy of the complete analysis is available from NMFS (see **ADDRESSES**).

Section 603(b)(1) of the Regulatory Flexibility Act requires that the Agency describe the reasons the action is being considered. The purpose of this proposed rulemaking is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to aid NMFS in monitoring and enforcing fisheries regulations, including those implemented at 50 CFR part 635 pertaining to HMS. Requiring that an E-MTU VMS unit be installed by a qualified marine electrician and implementing a declaration system would provide NMFS enforcement with improved communication capabilities with vessels at sea and fishing for HMS. The declaration system would also provide valuable information concerning target species and gear possessed onboard vessels to ensure enforcement of closed or restricted areas and other regulations.

Section 603(b)(2) of the Regulatory Flexibility Act requires a succinct statement of the objectives of, and legal basis for, the proposed rule. The objectives of this proposed rulemaking are to consider changes to the HMS regulations at 50 CFR part 635 requiring the use of VMS in Atlantic HMS fisheries. Requiring E-MTU VMS units in Atlantic HMS fisheries would represent a technological improvement over the MTU VMS units currently in use. By removing dated MTU VMS units from HMS fishing vessels and requiring that E-MTU VMS units be professionally installed, NMFS would improve fisheries monitoring and enforcement of regulations and provide

NMFS the ability to communicate directly with individual vessels at sea via electronic messaging and other means.

Under 5 U.S.C. 603 (b)(3), Federal agencies must provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) standards for a "small" versus "large" business entity are entities that have average annual receipts less than \$4.0 million for fish-harvesting; average annual receipts less than \$6.5 million for charter/party boats; 100 or fewer employees for wholesale dealers; or 500 or fewer employees for seafood processors. Under these standards, NMFS considers all HMS permit holders subject to this rulemaking to be small entities. NMFS estimates that this proposed rule would require 329 vessel owners deploying either PLL, BLL, or gillnet gear in HMS fisheries to have an E-MTU VMS unit installed by a qualified marine electrician. All of these vessel owners are considered small entities and are already required to have MTU VMS units. Depending on the fishing gear possessed on board, vessels would continue to use VMS units when away from port to provide location reports consistent with existing regulations. These vessels would also be required to declare target species and gear types possessed on board to NMFS enforcement prior to leaving port and then provide NMFS enforcement advanced notice of landing. The fishery declaration and return reports must be sent via an E-MTU VMS unit.

This proposed rule contains some modifications to existing reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603 (b)(4)). This proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the MSA, ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, and the Coastal Zone Management Act. NMFS does not believe that the new regulations proposed to be implemented would duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. The Regulatory Flexibility Act (5 U.S.C. 603

(c) (1)–(4)) lists four general categories of “significant” alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and
4. Exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all of the participants in Atlantic HMS fisheries are considered small entities. The new proposed requirements to have an updated E-MTU VMS unit installed by a qualified marine technician and expand reporting requirements to include a declaration system is expected to improve the reliability of VMS transmissions and provide NMFS enforcement with additional information to accurately monitor fishing activities. NMFS does not specify a particular manufacturer or model of VMS unit that vessel owners would need to procure to comply with the proposed action. There are several models available that meet the specifications described in the latest type approval notice (January 31, 2008; 73 FR 5813). NMFS performance standards are outlined in type approval notices published periodically by NMFS.

NMFS is considering two alternatives in compliance with the Initial Regulatory Flexibility Act. Alternative one, the no action alternative, would maintain the existing VMS requirements in Atlantic HMS fisheries. Alternative two would mandate that Atlantic HMS vessels that are required to use VMS replace their MTU VMS unit with an E-MTU VMS and have the new unit installed by a qualified marine electrician. This alternative would also implement a fishery declaration system where vessels would declare their target species and gear type (s) possessed onboard, as well as require vessels to provide advanced notice of departure and landing. Alternative two is the preferred alternative.

Under the no action alternative, vessels that are required to use VMS would be able to continue to use the MTU VMS units currently being

employed in the PLL, BLL, and gillnet fisheries or access reimbursement funds (\$3,100 per VMS unit) to replace these units with E-MTU VMS units. The decision to replace existing units with E-MTU VMS units would be at the discretion of individual vessel owners. Costs for individual E-MTU VMS units that meet the type approval specifications start at approximately \$3,100 per unit depending on the manufacturer, model, and additional features of the unit. In the event that existing units failed beyond repair, E-MTU VMS units would need to be installed, and owners would be eligible for reimbursement funds (\$3,100 per VMS unit) to offset the initial costs of the unit. NMFS expects that any vessel owner who applies for reimbursement funds will receive those funds, however reimbursement funds are not guaranteed and are subject to limitations and distributed on a first come, first served basis. In the event of necessary replacement, the E-MTU VMS units would need to be procured by vessel owners before returning to fishing activities, consistent with existing regulations, depending on the gear possessed onboard the vessel, timing, and location of the fishing activity. This alternative would not require that the new units be installed by a qualified marine electrician, rather, the new units could be installed by vessel owners/operators and an installation checklist would need to be completed and sent to NMFS enforcement per existing requirements.

Existing units are not capable of sending or receiving electronic messages, therefore, vessel owners or operators would not be required to provide NMFS enforcement with information concerning target species and gear possessed on board prior to leaving port to engage in fishing activities. Furthermore, vessel owners or operators would not be required to provide NMFS enforcement with advanced notice of departure and landing. Vessels would still be required to provide hourly position reports, starting two hours before leaving port, when away from port. It is estimated that these reports would continue to cost \$1.00 per day assuming 24 reports are sent. Maintenance costs for these units are estimated at \$500 per vessel per year. Some vessels may be committed to long-term service contracts with communication service providers and maintaining the status quo would not require vessels to break these contracts, avoiding any early termination fees.

Under the preferred alternative, participants would be required to install E-MTU VMS units, but they would be able to access reimbursement funds (\$3,100 per VMS unit) to offset the initial costs of the units. Reimbursement funds would be subject to limitations and distributed on a first come, first served basis. Furthermore, individuals that have previously received reimbursement funds for an E-MTU VMS unit required in another fishery would not be eligible for additional funds. The proposed action would also require that the units are installed by a qualified marine electrician (\$200 per installation) to ensure that units are installed and operating properly to avoid transmission failures that may occur when vessels are away from port and subject to VMS requirements. Marine electricians are capable of providing information on E-MTU VMS use and troubleshooting during the installation process. NMFS is also considering a delayed implementation date of 90 days after the final rule publishes to allow vessel owners time to procure and have an E-MTU VMS unit installed by a qualified marine electrician and operational on their vessels, thereby avoiding any early termination fees that may incur. The exact cost of termination fees are difficult to calculate as the terms of service contracts vary according to service providers and are likely to be vessel specific. Finally, unlike the MTU VMS units, which could have maintenance costs of approximately \$500 per year, E-MTU VMS units have very low to no maintenance costs.

Costs of compliance with the preferred alternative for vessel owners are estimated to be \$3,771; \$3,630; \$3,537 per vessel for PLL, BLL, and shark gillnet vessels, respectively, in the first year (Table 1). These are the costs of compliance, pre-reimbursement. Reimbursement funds of \$3,100 per VMS unit would reduce the costs to \$546 per vessel, on average, across all fisheries. Costs in year two (and beyond) would be limited to the costs of sending/receiving declaration reports (\$0.06 per report) and providing vessel location information on an hourly basis (\$1.56 per vessel per day) and is estimated to be \$471; \$331; and \$237 per vessel for PLL, BLL, and shark gillnet vessels respectively.

Table 1 summarizes some of the costs associated with the proposed rule. A description of the figures and calculations used in Table 1 is provided below the table.

TABLE 1—COSTS OF COMPLIANCE EXPECTED AS A RESULT OF REQUIRING E-MTU VMS UNITS IN AFFECTED HMS FISHERIES

	Pelagic longline vessels	Shark bottom longline vessels	Shark gillnet vessels
E-MTU VMS Unit	\$3,100	\$3,100	\$3,100.
Estimated Installation Costs (one-time)	\$50–400 (\$200 used for estimation purposes).	\$50–400 (\$200 used for estimation purposes).	\$50–400 (\$200 used for estimation purposes)
Daily Position Report Costs (Hourly, 24/day) (\$0.06/report * 24 reports/day).	\$1.44	\$1.44	\$1.44.
Estimated Days Fishing/Year	324	212	152.
Annual Position Report Costs/Vessel (\$1.44/day * days fishing/year).	\$466.56/vessel	\$305.28/vessel	\$218.88/vessel.
Annual Number of Fishing Trips	36	212	152.
Annual Gear/Spp. Declaration Costs (\$0.12/trip)/Vessel (\$0.12/trip * trips/year) ¹ .	\$4.32	\$25.44	\$18.24.
Total Estimated Costs/Vessel (Year 1) (VMS unit + installation + position reports + declaration reports).	\$3,770.88	\$3,630.72	\$3,537.12.
Number of Affected Vessels	249	50	30.
Total Costs by Fishery (Year 1) (Total Estimated Costs/Vessel * Number of Affected Vessels).	\$938,949	\$181,536	\$106,113.
Gross Cost of Compliance, Year One (all HMS vessels combined).	.....	\$1,226,598 .....	.....
Potential Reimbursement Funds (\$3,100/vessel * Number of Affected Vessels).	.....	\$1,019,900 .....	.....
Compliance Costs (Year 1) (avg. cost/vessel) (installation + position reports + declaration reports).	\$670/vessel	\$530/vessel	\$437/vessel.
Compliance Costs/Vessel (Year 2 and Beyond) (position reports + declaration reports).	\$470/vessel	\$330/vessel	\$237/vessel.

¹ The declaration costs per trip will vary based upon the number of gear types possessed onboard as operators would be required to submit one declaration for each fishing gear possessed.

There are benefits associated with the proposed action relative to the no-action alternative. Requiring that an E-MTU VMS unit be installed by a qualified marine electrician would improve the reliability of VMS data transmitted from HMS vessels. Implementing a declaration system would enhance NMFS communication with HMS vessels at sea and provide valuable information concerning target species and gear type(s) possessed onboard vessels to ensure sound enforcement of closed areas and other regulations. Furthermore, the delayed implementation date associated with the preferred alternative would allow more time for fishermen to make the transition to the new VMS units and a declaration system. NMFS is seeking comment from the public regarding the implementation date and costs for installation to ensure that economic impacts are accurate. One of the objectives of this proposed action is to modify the requirements in order to ensure that small entities affected can access the reimbursement funds and make the transition to E-MTU VMS gradually.

This proposed action does not contain regulatory provisions with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 14, 2011.
John Oliver,
Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.69, paragraphs (a) introductory text, (d), (e), and (g) are revised to read as follows:

§ 635.69 Vessel monitoring systems.

(a) *Applicability.* To facilitate enforcement of time/area and fishery closures, an owner or operator of a commercial vessel, permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic or bottom longline or gillnet gear, is required to install a NMFS-approved enhanced mobile transmitting unit vessel monitoring system (VMS) on board the vessel and operate the VMS unit under the following circumstances:
 * * * * *

(d) *Installation and activation.* Only a VMS unit that has been approved by NMFS for the applicable fishery may be used, and the VMS unit must be installed by a qualified marine electrician. When the NMFS-approved VMS unit is installed and activated or reinstalled and reactivated, the vessel owner or operator must—

(1) Follow procedures indicated on a NMFS-approved installation and activation checklist for the applicable fishery, which is available from NMFS, Office of Enforcement, Southeast Region; and,

(2) Submit to NMFS, Office of Enforcement, Southeast Region, a

statement certifying compliance with the checklist, as prescribed on the checklist.

(3) Submit to NMFS, Office of Enforcement, Southeast Region, the checklist, completed by a qualified marine electrician, which is available from NMFS, Office of Enforcement, Southeast Region. Vessels fishing prior to NMFS' receipt of the completed checklist and compliance certification statement will be in violation of the VMS requirement.

(e) *Operation.* (1) Owners or operators of vessels permitted, or required to be permitted, to fish for HMS, that have pelagic or bottom longline gear or gillnet gear on board, and that are required to have a VMS unit installed, as specified in paragraph (a) of this section, must activate the VMS unit to submit automatic position reports at least 2 hours prior to leaving port and continuing until the vessel returns to port. While at sea, the unit must always be on, operating and reporting without interruption, and NMFS enforcement

must receive position reports without interruption. No person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement.

(2) At least 2 hours prior to departure for each trip, a vessel owner or operator must report to NMFS any HMS fishery in which the vessel will participate on that trip and the specific type(s) of fishing gear, using NMFS-defined gear codes, that will be on board the vessel. If the vessel will be participating in multiple HMS fisheries, or multiple gears will be possessed on board the vessel, the vessel owner or operator must submit multiple electronic reports to NMFS. This information must be reported to NMFS using an attached VMS terminal.

(3) A vessel owner or operator must report advance notice of landing to NMFS. For the purposes of this

paragraph, landing means to arrive at a dock, berth, beach, seawall, or ramp. The vessel owner or operator is responsible for ensuring that NMFS is contacted at least 3 hours in advance of landing. This information must be reported to NMFS using an attached VMS terminal.

* * * * *

(g) *Repair and replacement.* After a fishing trip during which interruption of automatic position reports has occurred, the vessel's owner or operator must have a qualified marine electrician replace or repair the VMS unit prior to the vessel's next trip. Repair or reinstallation of a VMS unit or installation of a replacement, including change of communications service provider, shall be in accordance with the installation and activation requirements specified at paragraph (d) of this section.

* * * * *

[FR Doc. 2011-15325 Filed 6-20-11; 8:45 am]

BILLING CODE 3510-22-P

Notices

Federal Register

Vol. 76, No. 119

Tuesday, June 21, 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

Submission for OMB Review; Comment Request

June 15, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB),

OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Customer/Stakeholder Satisfaction Surveys

OMB Control Number: 0579-0339.

Summary of Collection: Collection and dissemination of animal health data and information is mandated by 7 U.S.C. 391, the Animal Industry Act of 1884, which established the precursor of the Animal and Plant Health Inspection Service (APHIS), Veterinary Services, the Bureau of Animal Industry. The collection, analysis and dissemination of livestock and poultry health information on a national basis are consistent with the APHIS mission of protecting and improving American agriculture's productivity and competitiveness. The National Animal Health Monitoring System (NAHMS) program relies heavily on producer and industry support. The NAHMS Program is committed to improving the value of studies for producers and industry, reducing the burden of these studies on respondents, and developing timely information of value to the American public. As part of this commitment, the NAHMS is seeking approval to perform customer/stakeholder satisfaction surveys for participants of NAHMS studies, user of NAHMS information as well as recipients of the U.S. Animal Health Report. Therefore, NAHMS needs to collect this type of feedback from producer and other to enhance future studies and ensure that the informational products are meeting their needs.

Need and Use of the Information: The information collected through the surveys will be analyzed and used for internal program adjustments and to tailor future NAHMS studies and reports.

The potential benefit to the industry from these surveys is feedback to improve the program, laboratory services and informational products by gathering relevant and timely information and opinion on the content and method of program or service delivery.

Description of Respondents: Business or other for-profit.

Number of Respondents: 21,300.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 1,610.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011-15332 Filed 6-20-11; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. DA-10-03; AMS-DA-09-0053]

Milk for Manufacturing Purposes and Its Production and Processing; Requirements Recommended for Adoption by State Regulatory Agencies

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This document amends the recommended manufacturing milk requirements (Recommended Requirements) by raising the maximum allowable somatic cell count in producer herd goat milk from 1,000,000 cells per milliliter to 1,500,000 cells per milliliter. This action was initiated at the request of the National Association of Dairy Regulatory Officials (NADRO) and was developed in cooperation with NADRO, dairy trade associations, and producer groups. This will ensure that goat milk can continue to be shipped and recognizes that goats have a need for different regulatory limits for somatic cells than cows.

DATES: *Effective Date:* July 21, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Sausville, Chief, Standardization Branch, Dairy Programs, AMS, USDA, telephone (202) 720-7473 or e-mail *Susan.Sausville@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: Under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), the United States Department of Agriculture maintains a set of model regulations relating to quality and sanitation requirements for the production and processing of manufacturing grade milk. These Recommended Requirements are developed by AMS and recommended for adoption and enforcement by the various States that regulate manufacturing grade milk. The purpose of the model requirements is to promote

uniformity in State dairy laws and regulations relating to manufacturing grade milk.

In consultation with representatives from NADRO, State regulatory agencies, FDA, and dairy industry trade associations, the Department prepared the Recommended Requirements to promote uniformity in State dairy laws and regulations for manufacturing grade milk. To accommodate changes that have occurred in the dairy industry, NADRO and various State officials have from time to time requested USDA to update the Recommended Requirements.

During its July 2009 annual meeting, NADRO passed a resolution requesting USDA to raise the maximum allowable somatic cell count for producer herd goat from 1,000,000 cells per milliliter to 1,500,000 cells per milliliter to provide consistency with the current requirements in place for Grade A producer herd goat milk. Due to inherent differences between cows and goats, goat milk with a somatic cell count of 1,500,000 million cells per milliliter can be produced from a healthy, non-mastitic udder and therefore, is quality milk. The need for a separate standard for goat milk was recognized by the National Conference on Interstate Milk Shipments (NCIMS) and was raised to 1,500,000 million cells per milliliter at their 2009 conference. This change will align the Recommended Requirements with the Grade A requirements for goat's milk. AMS reviewed this resolution and developed a draft that identified the changes associated with this request. This draft was provided to State regulatory officials and dairy trade association representatives for informal discussion prior to publication in the **Federal Register**.

The requirements of Executive Order 13132, Federalism, were considered in developing this notice, and it has been determined that this action does not have substantial effects on the States (the relationship between the National Government and the States or on the distribution of power and responsibilities among the various levels of government).

Public Comment

A Notice of Proposal to Change the document, "Milk for Manufacturing Purposes and Its Production and Processing; Recommended Requirements for Adoption by State Regulatory Agencies," was published in the **Federal Register** on October 5, 2010 (75 FR 61418). The Notice of Proposal to Change the document provided for a 60-day comment period that ended

December 5, 2010. Two comments were received. One from the membership of the Other Species Milk Committee of the National Conference on Interstate Milk Shipments (NCIMS) in support of the proposed amendment and one from an anonymous source in opposition of the amendment which provided no scientific justification to support their opposition.

Accordingly, the changes proposed in the Milk for Manufacturing Purposes and its Production and Processing; Recommended Requirements for Adoption by State Regulatory Agencies are incorporated in the revised Recommended Requirements.

The Recommended Requirements are available either from the above address or by accessing the information on the Internet at the following address: <http://www.ams.usda.gov/dairy/manufmlk.pdf>.

Dated: June 15, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011-15447 Filed 6-20-11; 8:45 am]

BILLING CODE 3410-02-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: Office of the Secretary, Office of Civil Rights.

Title: Reporting Process for Complaint of Employment Discrimination based on Sexual Orientation against the Department of Commerce.

OMB Control Number: 0690-0024.

Form Number(s): CD-545.

Type of Request: Regular submission.

Burden Hours: 10.

Number of Respondents: 20.

Average Hours per Response: 30 minutes.

Needs and Use: Pursuant to Executive Order 11478 and Department of Commerce Administrative Order (DAO) 215-11, an employee or applicant for employment with the Department of Commerce who alleges that he or she has been subjected to discriminatory treatment based on sexual orientation by the Department of Commerce or one of its sub-agencies, must submit a signed statement that is sufficiently precise to identify the actions or practices that

form the basis of the complaint. Through use of this standardized form, the Office of Civil Rights proposes to collect the information required by the Executive Order and DAO in a uniform manner that will increase the efficiency of complaint processing and trend analyses of complaint activity.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Nicholas Fraser (202) 395-5887.

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 e-mail 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 Nicholas Fraser, OMB Desk Officer, fax number (202) 395-7258 or via e-mail at Nicholas.A.Fraser@omb.eop.gov

Dated: June 16, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011-15431 Filed 6-20-11; 8:45 am]

BILLING CODE 3510-BP-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 43-2011]

Foreign-Trade Subzone 38A; Application for Expansion of Manufacturing Authority (Production Capacity); BMW Manufacturing Co., LLC; (Motor Vehicles)

A request has been submitted to the Foreign-Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 38, on behalf of BMW Manufacturing Co., LLC, (BMWMC), operator of Subzone 38A, BMWMC plant, Greer, South Carolina, requesting authority to expand BMWMC's existing scope of FTZ manufacturing authority to include additional production capacity. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and section 400.28(a)(2) of the Board's regulations (15 CFR part 400). It was formally filed on June 15, 2011.

Subzone 38A was approved by the Board in 1994 with authority granted for

the manufacture of up to 219,000 light duty passenger vehicles at the BMWMC plant (6,500 employees/1,068 acres) located at 1400 Highway 101 South in Greer (Spartanburg County), South Carolina (Board Order 697, 59 FR 35096, 7–8–94). Activity at the facility includes machining, painting, assembly, finishing and testing/quality control. Components sourced from abroad (representing about 50% of the finished vehicles' material value) used in the manufacturing activity include: Engines, transmissions (and related parts), axles, plastic and rubber parts, mirrors, glass, wiring harnesses, fasteners, springs, electronic components (modules, switches, instruments), regulators, ignition parts, suspension modules and related parts, shock absorbers, seats, and bearings (duty rate range: free—9.9%).

The applicant now requests that the production capacity under its existing scope of FTZ manufacturing authority be expanded to include up to an additional production of 131,000 vehicles per year, which would bring its total authorized output to 350,000 vehicles per year. The expanded operations will involve similar finished products and utilization of both foreign-sourced and domestic materials and components as under BMWMC's existing scope of FTZ authority.

Expanded FTZ procedures could continue to exempt BMWMC from customs duty payments on the foreign-origin components used in production for export (between 60 and 70% of shipments). On its domestic shipments, the company would be able to elect the duty rate that applies to finished passenger motor vehicles (2.5%) for the foreign-origin inputs noted above. Subzone status would further allow BMWMC to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. BMWMC would also be exempt from duty payments on foreign inputs that become scrap during the production process.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington,

DC 20230–0002. The closing period for receipt of comments is August 22, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 6, 2011.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above and in the "Reading Room" section of the Board's Web site, which is accessible via <http://www.trade.gov/ftz>.

For further information, contact Pierre Duy at Pierre.Duy@trade.gov or (202) 482–1378.

Dated: June 15, 2011.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2011–15462 Filed 6–20–11; 8:45 am]

BILLING CODE

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 42–2011]

Foreign-Trade Zone 37—Orange County, NY; Application for Reorganization (Expansion of Service Area) Under the Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the County of Orange, New York, grantee of FTZ 37, requesting authority to reorganize its zone to expand its service area under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 01/12/09 (correction 74 FR 3987, 01/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 15, 2011.

FTZ 37 was approved by the Board on May 4, 1978 (Board Order 130, 43 FR 20526, 05/12/78) and expanded on July 9, 1999 (Board Order 1044, 64 FR 38887, 07/20/99). FTZ 37 was reorganized

under the ASF on May 13, 2010 (Board Order 1680, 75 FR 29727, 5/27/10).

The zone project currently has a service area that includes Orange County. The applicant is requesting authority to expand the service area of the zone to include Dutchess County, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The proposed expanded service area is adjacent to the New York/Newark Customs and Border Protection port of entry.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is August 22, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 6, 2011).

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via <http://www.trade.gov/ftz>. For further information, contact Kathleen Boyce at Kathleen.Boyce@trade.gov or (202) 482–1346.

Dated: June 15, 2011.

Andrew McGilvray,
Executive Secretary.

[FR Doc. 2011–15463 Filed 6–20–11; 8:45 am]

BILLING CODE

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Foreign-Trade Zone Application

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general

public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before August 22, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher J. Kemp, Office of Foreign-Trade Zones, (202) 482-0862, or e-mail, Christopher.Kemp@trade.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Foreign-Trade Zone Application is the vehicle by which individual firms or organizations apply for foreign-trade zone (FTZ) status, for subzone status, manufacturing authority or for expansions and reorganizations of existing zones. The FTZ Act and Regulations require that an application with a description of the proposed project be made to the FTZ Board (19 U.S.C. 81b and 81f; 15 CFR 400.24-26) before a license can be issued or a zone can be expanded. The Act and Regulations require that applications contain detailed information on facilities, financing, operational plans, proposed manufacturing operations, need, and economic impact. Manufacturing activity in zones and subzones can involve issues related to domestic industry and trade policy impact. Such applications must include specific information on the customs-tariff related savings that result from zone procedures and the economic consequences of permitting such savings. The FTZ Board needs complete and accurate information on the proposed operation and its economic effects because the Act and Regulations authorize the Board to restrict or prohibit operations that are detrimental to the public interest.

II. Method of Collection

U.S. firms or organizations submit applications in paper format along with an electronic copy to the Office of Foreign-Trade Zones.

III. Data

OMB Control Number: 0625-0139.
Form Number: N/A.
Type of Review: Regular submission.

Affected Public: State, local, or tribal governments; not-for-profit institutions applying for foreign-trade zone status, subzone status, or modification of existing status.

Estimated Number of Respondents: 74.

Estimated Time per Response: 34 to 148 hours (depending on type of application).

Estimated Total Annual Burden Hours: 4,969.

Estimated Total Annual Cost to Public: \$140,553.

IV. Request for Comments

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 (including hours and cost) 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.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 16, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011-15357 Filed 6-20-11; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351-828, A-588-846, C-351-829]

Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil and Japan: Revocation of the Antidumping Duty Orders on Brazil and Japan and the Countervailing Duty Order on Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 6, 2010, the Department of Commerce ("the Department") published the final results of the sunset reviews of the antidumping duty ("AD") orders on certain hot-rolled flat-rolled carbon-quality steel products ("hot-rolled

steel") from Brazil and Japan, and on December 3, 2010, the final results of the sunset review of the countervailing duty ("CVD") order on hot-rolled steel from Brazil. In the final results, the Department determined that revocation of these orders would be likely to lead to continuation or recurrence of dumping and subsidization, respectively. On June 6, 2011, the International Trade Commission ("ITC") determined that revocation of these orders would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Therefore, the Department is revoking the AD orders on hot-rolled steel from Brazil and Japan and the CVD order on hot-rolled steel from Brazil.

DATES: *Effective Date:* May 26, 2010.

FOR FURTHER INFORMATION CONTACT: Milton Koch or Dana Mermelstein, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2584 or (202) 482-1391.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2010, the Department initiated the second sunset reviews of the AD orders on hot-rolled steel from Brazil and Japan and the CVD order on hot-rolled steel from Brazil in accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"). See *Initiation of Five-Year ("Sunset") Review*, 75 FR 16437 (April 1, 2010). The Department completed expedited reviews for the AD orders. The Department found that revocation of the AD orders would be likely to lead to a continuation or recurrence of dumping, and notified the ITC of the margins likely to prevail should the orders be revoked. See *Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil and Japan: Final Results of Expedited Sunset Reviews of the Antidumping Duty Orders*, 75 FR 47541 (August 6, 2010).

After receiving adequate responses from domestic and respondent interested parties, in accordance with 19 CFR 351.218(e)(1)(ii)(A), the Department conducted a full sunset review of the CVD order on hot-rolled steel from Brazil. The Department found that revocation of the CVD order would be likely to lead to a continuation or recurrence of subsidization, and notified the ITC of the net subsidy rates likely to prevail should the order be revoked. See *Certain Hot-Rolled Flat-Rolled Carbon-*

Quality Steel Products From Brazil: Final Results of Full Sunset Review of Countervailing Duty Order, 75 FR 75455 (December 3, 2010).

On June 10, 2011, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the AD orders on hot-rolled steel from Brazil and Japan and the CVD order on hot-rolled steel from Brazil would not be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See *Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil, Japan, and Russia*, 76 FR 34101 (June 10, 2011).

Scope of the Orders

The products covered by the antidumping and countervailing duty orders are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not

exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of the orders.

Specifically included in the scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (“IF”)) steels, high strength low alloy (“HSLA”) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of the orders, regardless of Harmonized Tariff Schedule of the United States (“HTSUS”) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25

percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.012 percent of boron, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of the orders unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of the orders:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including *e.g.*, ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max

Width = 44.80 inches maximum;
Thickness = 0.063–0.198 inches; Yield

Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.16%	0.70–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.50–0.70%	0.25% Max	0.20% Max
Mo 0.21% Max							

Width = 44.80 inches maximum;
Thickness = 0.350 inches maximum;

Yield Strength = 80,000 ksi minimum;
Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	1.30–1.80%	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max
V(wt.)	Cb						
0.10 Max	0.08% Max						

Width = 44.80 inches maximum;
Thickness = 0.350 inches maximum;

Yield Strength = 80,000 ksi minimum;
Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.15% Max	1.40% Max	0.025% Max	0.010% Max	0.50% Max	1.00% Max	0.50% Max	0.20% Max
Nb	Ca	Al					
0.005% Min	Treated	0.01–0.07%					

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

- Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) Tensile strength between 540 N/mm² and 640 N/mm² and an elongation percentage ≥ 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm² and 690 N/mm² and an elongation percentage ≥ 25 percent for thicknesses of 2 mm and above.

- Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

- Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to the orders is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00.

Certain hot-rolled flat-rolled carbon-quality steel products are covered by the orders, including: vacuum degassed,

fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by the orders is dispositive.

Revocation

As a result of the determination by the ITC that revocation of these AD and CVD orders is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, the Department is now revoking the AD orders on hot-rolled steel from Brazil and Japan and the CVD order on hot-rolled steel from Brazil, pursuant to section 751(d) of the Act.

Effective Date of Revocation

The effective date of revocation is May 26, 2010, the fifth anniversary of the date of publication in the **Federal Register** of the most recent notice of continuation of the AD orders and the CVD order. See 19 CFR 351.222(i)(2)(i). Pursuant to 19 CFR 351.222(i)(2)(i), the Department intends to instruct U.S. Customs and Border Protection to terminate the suspension of liquidation of the merchandise subject to these AD orders and the CVD order entered, or withdrawn from warehouse, for consumption, on or after May 26, 2010.

Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and AD and CVD deposit requirements. The Department will complete any pending administrative reviews of the orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This notice serves as a reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information

disclosed under the APO in accordance with 19 CFR 351.305. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO, which may be subject to sanctions.

This revocation pursuant to five-year (sunset) reviews and this notice are issued and published in accordance with sections 751(c), 751(d)(2), and 777(i)(1) of the Act.

Dated: June 15, 2011.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–15460 Filed 6–20–11; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–891]

Hand Trucks and Certain Parts Thereof From the People's Republic of China: Final Results and Final Rescission in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* June 21, 2011.

SUMMARY: On January 14, 2011, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on hand trucks and certain parts thereof from the People's Republic of China (PRC). See *Hand Trucks and Certain Parts Thereof from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 76 FR 2648 (January 14, 2011) (*Preliminary Results*). Based upon our analysis of the comments, we made changes to the margin calculations for the final results.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Scott Hoefke, or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone: (202) 482-2924, (202) 482-4947 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 2011, the Department published the preliminary results of administrative review of the antidumping duty order on hand trucks and certain parts thereof from the PRC. On February 3, 2011, Gleason Industrial Products, Inc., and Precision Products, Inc. (petitioners) and New-Tec Integration (Xiamen) Co., Ltd. (New-Tec) submitted additional surrogate value (SV) information. On February 14, 2011, New-Tec submitted rebuttal comments on the surrogate value information petitioners submitted on February 3. On February 17, 2011, petitioners submitted rebuttal comments on the surrogate value information New-Tec submitted on February 3, 2011. On February 28, 2011, New-Tec submitted factual information to rebut, clarify, or correct the factual information submitted by the petitioners on February 17, 2011.

In the preliminary results, the Department invited interested parties to submit case briefs within 30 days of publication of the preliminary results and rebuttal briefs within five days after the due date for filing case briefs. See *Preliminary Results*, 76 FR at 2654. On January 21, 2011, the Department extended the due date for case briefs and rebuttal briefs by one week. We received a case brief from petitioners on February 22, 2011, and rebuttal briefs from New-Tec and Cosco Home and Office Products, a U.S. importer, on March 1, 2011.

On February 14, 2011, petitioners also submitted comments on the Department's preliminary intent to rescind the review with respect to Yangjiang Shunhe Industrial Co. (Yangjiang Shunhe). Also on February 14, 2011, petitioners requested the Department hold a public hearing to discuss the preliminary results. Petitioners withdrew their request for a hearing on March 9, 2011. Therefore, we did not hold a hearing.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this review are addressed in the memorandum entitled, "Hand Trucks and Certain Parts Thereof From the People's Republic of China: Issues and Decision Memorandum for the Final Results of 2008-2009 Administrative Review," which is dated concurrently with and adopted by this notice (Decision Memorandum). A list of the issues which parties raised, and to which we

respond in the Decision Memorandum is attached to this notice as an Appendix. The Decision Memorandum is a public document, and is on file in the Central Records Unit (CRU), Main Commerce Building, Room 7046, and is accessible on the Department's Web site at <http://www.trade.gov/ia>. The paper copy and electronic version of the memorandum are identical in content.

Period of Review

The period of review (POR) is December 31, 2008, through November 30, 2009.

Scope of the Order

The merchandise subject to this antidumping duty order consists of hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof. A complete or fully assembled hand truck is a hand-propelled barrow consisting of a vertically disposed frame having a handle or more than one handle at or near the upper section of the vertical frame; at least two wheels at or near the lower section of the vertical frame; and a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.

That the vertical frame can be converted from a vertical setting to a horizontal setting, then operated in that horizontal setting as a platform, is not a basis for exclusion of the hand truck from the scope of this petition. That the vertical frame, handling area, wheels, projecting edges or other parts of the hand truck can be collapsed or folded is not a basis for exclusion of the hand truck from the scope of the petition. That other wheels may be connected to the vertical frame, handling area, projecting edges, or other parts of the hand truck, in addition to the two or more wheels located at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition. Finally, that the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition.

Examples of names commonly used to reference hand trucks are hand truck,

convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley. They are typically imported under heading 8716.80.50.10 of the Harmonized Tariff Schedule of the United States (HTSUS), although they may also be imported under heading 8716.80.50.90. Specific parts of a hand truck, namely the vertical frame, the handling area and the projecting edges or toe plate, or any combination thereof, are typically imported under heading 8716.90.50.60 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope is dispositive.

Excluded from the scope are small two-wheel or four-wheel utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular materials measuring less than 5/8 inch in diameter; hand trucks that use motorized operations either to move the hand truck from one location to the next or to assist in the lifting of items placed on the hand truck; vertical carriers designed specifically to transport golf bags; and wheels and tires used in the manufacture of hand trucks.

Changes Since the Preliminary Results

Based on a review of the record and comments received from parties regarding our *Preliminary Results*, we have made revisions to certain SVs and the margin calculation for New-Tec in these final results. We made the following changes:

- We used the 2009-10 financial statement of Rexello Castors Private, Ltd., for calculating financial ratios;
- We revised our calculation of brokerage and handling to take into account the weight of the hand truck.

Separate Rates Determination

In our *Preliminary Results*, we determined that New-Tec met the criteria for separate rate status. We have not received any information since issuance of the preliminary results that provides a basis for reconsidering this preliminary determination. Therefore, the Department continues to find that New-Tec meets the criteria for a separate rate.

Final Partial Rescission

In the *Preliminary Results*, the Department preliminarily rescinded this review with respect to Yangjiang Shunhe and Century Distribution Systems, Inc. (Century Distribution) because the Department preliminarily determined that they had no shipments of subject merchandise to the United States during the POR. On February 14,

2011, petitioners submitted comments alleging that there was substantial evidence on the record that Yangjiang Shunhe did have shipments of subject merchandise to the United States during the POR. We have addressed petitioners' comments in the Decision Memorandum at Comment 9. Based on our review of the record we affirm our previous determination that there is no record evidence that Yangjiang Shunhe had shipments of subject merchandise to the United States during the POR. Thus, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice, we are rescinding this review with respect to Yangjiang Shunhe and Century Distribution.

Use of Adverse Facts Available (AFA)

In accordance with section 776(b) of the Act, we determine that the use of AFA as the basis for the weighted-average dumping margin is appropriate for the PRC-wide entity. As explained in the *Preliminary Results*, Sunshine International Corporation (Sunshine International), Zhejiang Yinmao Import and Export Co. (Zhejiang Yinmao), and Qingdao Huazhan Hardware and Machinery Co., Ltd. (Qingdao Huazhan), did not submit any information on the record regarding their separate-rate status, and did not respond to requests for information from the Department. As such, they have not rebutted the presumption of PRC-government control, and do not qualify for a separate rate. Therefore, the Department continues to find that they should be treated as part of the PRC-wide entity.

Because we have determined that Sunshine International, Zhejiang Yinmao, and Qingdao Huazhan are part of the PRC-wide entity, the PRC-wide entity is under review. Pursuant to section 776(a)(2)(A) and (C) of the Act, we find that Sunshine International, Zhejiang Yinmao, and Qingdao Huazhan failed to respond to the Department's questionnaires, withheld information requested by the Department, and impeded the conduct of this review. Accordingly, the Department continues to find that it is appropriate to base the dumping margin of the PRC-wide entity on the facts otherwise available on the record. Further, because the failure of Sunshine International, Zhejiang Yinmao, and Qingdao Huazhan to provide requested information constitutes circumstances under which it is reasonable to conclude that less than full cooperation has been shown, pursuant to section 776(b) of the Act, the Department has determined that, when selecting from among the facts otherwise available, an adverse inference is warranted with

respect to the PRC-wide entity. See *Preliminary Results*, 76 FR at 2653.

As AFA, we have assigned 383.60 percent to the PRC-wide entity. This rate was assigned in the less-than-fair-value investigation of this proceeding, and is the highest rate determined for any party in any segment of this proceeding. Furthermore, as required by section 776(c) of the Act, we corroborated this margin with respect to the PRC-wide entity, to the extent practicable. For a detailed explanation of how we corroborated this margin, see *Preliminary Results*, 76 FR at 2654.

Final Results of the Review

The Department has determined that the following margin exists for the period December 1, 2008, through November 30, 2009:

Exporter	Weighted-average margin (percent)
New-Tec Integration (Xiamen) Co., Ltd	0.00
PRC-wide Entity	383.60

Assessment Rates

Consistent with these final results, and pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.212(b)(1), the Department will direct CBP to assess antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions to CBP 15 days after the date of publication of the final results of this review. Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis*.

Cash Deposit Requirements

The following cash deposit requirements, when imposed, will be effective upon publication of the final results of this review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash-deposit rate for each of the reviewed companies that received a separate rate in this review will be the rate listed in the final results of this review (except that if the rate for a particular company is *de minimis*, i.e.,

less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period of review; (3) if the exporter is a firm not covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the PRC-wide rate of 383.60 percent. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: June 13, 2011.

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

Appendix

- Comment 1. Whether to Value Certain Inputs Using Purchases from Market-Economy Suppliers.
Comment 2. Use of Godrej & Boyce Manufacturing Co., Ltd. (Godrej & Boyce) Financial Statements.

- Comment 3. Use of the 2009–2010 Financial Statements of Rexello Castors Private Ltd. (Rexello).
- Comment 4. 2004–2005 Financial Statements of Rexello and 2006–2007 Financial Statements of Infiniti Modules Private Ltd. (Infinito Modules).
- Comment 5. Surrogate Value for Hot-Rolled Steel.
- Comment 6. Sample Sales.
- Comment 7. Whether to Deduct Warranty Expenses from U.S. Price.
- Comment 8. Whether to Revise the Calculation of Domestic Brokerage and Handling Expenses.
- Comment 9. Whether to Rescind the Review with Respect to Yangjiang Shunhe Industrial Co.

[FR Doc. 2011–15448 Filed 6–20–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 15, 2010, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico. See *Certain Circular Welded Non-Alloy Steel Pipe From Mexico: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 78216 (December 15, 2010) (*Preliminary Results*). This administrative review covers mandatory respondents Mueller Comercial de Mexico, S. de R.L. de C.V., and Southland Pipe Nipples Company, Inc., (Mueller) and Ternium Mexico, S.A. de C.V. (Ternium). Tuberia Nacional, S.A. de C.V. (TUNA) was subject to a concurrent changed circumstances review of this order; in its changed circumstances review, the Department determined that Lamina y Placa Comercial, S.A. de C.V. (Lamina) is the successor-in-interest to TUNA. See *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non-Alloy Steel Pipe from Mexico*, 75 FR 82374 (December 30, 2010). Because the determination was made after the *Preliminary Results* and the parties refer to this entity as TUNA in their case and rebuttal briefs, we continue to refer to this entity as TUNA for these final

results so as to avoid confusion. The period of review (POR) is November 1, 2008, through October 31, 2009.

We determine that sales of subject merchandise have been made at less than normal value (NV). One of the companies, Ternium, refused to cooperate with the Department in this administrative review. We have calculated a dumping margin for Mueller. We determine that TUNA had no reviewable sales, shipments, or entries during the POR. The Department's review of import data supported TUNA's claim of no shipments during the POR (see "TUNA's No-Shipment Claim" section of this notice for further explanation).

As a result of our analysis of the comments received, these final results differ from the *Preliminary Results*. For our final results, we find that Ternium and Mueller made sales of subject merchandise at less than NV. We have listed the final dumping margin below in the section entitled "Final Results of Review."

DATES: *Effective Date:* June 21, 2011.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–6312 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 2010, the Department published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain circular welded non-alloy steel pipe from Mexico for the period November 1, 2008, to October 31, 2009. See *Preliminary Results*.

As noted in the *Preliminary Results*, we conducted verification of the Mueller sales responses on October 25–29, 2010, and of the TUNA no-shipments claim on November 1–3, 2010. Because there was insufficient time to complete the verification memoranda for the *Preliminary Results*, these verification memoranda were released after the *Preliminary Results*. Mueller submitted new sales data (in response to the Department's request made at the end of verification) on December 1, 2010; we used these data in our post-preliminary margin calculation for Mueller and continue to use them for these final results.

On December 7, 2010, the Department issued second supplemental section D

questionnaires to Mueller, TUNA, and Ternium. On December 21, 2010, Ternium submitted its response to our second supplemental section D questionnaire (but we are not using a Ternium database for this final results calculation, nor did we use one for the post-preliminary margin calculation). On January 4, 2011, Mueller submitted its response to our second supplemental section D questionnaire (which contained its latest cost database). On January 4, 2011, TUNA submitted its response to our second supplemental section D questionnaire (but did not need to revise its database). Therefore, these final results are based on the same databases used for the post-preliminary calculation. (Note: Ternium is the successor-in-interest to HYLSA; it is referenced alternately by "Ternium," by "HYLSA," and by "Termex" in the body of the program. See *Final Results of Antidumping Duty Changed Circumstances Review: Certain Circular Welded Non-Alloy Steel Pipe and Tube from Mexico*, 74 FR 41681 (August 18, 2009)).

On February 10, 2011, the Department released a post-preliminary calculation. See Memorandum from Mark Flessner to the File entitled "Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Post-Preliminary Results Analysis Memorandum for Mueller Comercial, S. de R.L. de C.V.," dated February 10, 2011 (Post-Preliminary Results Analysis Memorandum). As part of that post-preliminary calculation, three memoranda from Heidi K. Schriefer to Neal M. Halper were placed on the record. These memoranda were entitled: (1) "Cost of Production and Constructed Value Calculation Adjustments for the Post-Preliminary Results—Mueller Comercial de Mexico, S. de R.L. de C.V.;" (2) "Cost of Production and Constructed Value Adjustments for the Post-Preliminary Results—Ternium Mexico, S.A. de C.V.;" and (3) "Cost of Production and Constructed Value Adjustments for the Post-Preliminary Results—Tuberia Nacional, S.A. de C.V.;" These memoranda were incorporated by reference into the Post-Preliminary Results Analysis Memorandum, providing all changes made to the programming.

In response to the Department's invitation to comment on the preliminary results of this review, parties filed multiple case and rebuttal briefs. Respondent Mueller filed its case brief on February 25, 2011 (Mueller case brief). Petitioner United States Steel Coporation (U.S. Steel) also filed its case brief regarding TUNA on February 25, 2011 (U.S. Steel's TUNA case brief). In

addition, petitioner U.S. Steel filed a separate case brief regarding Mueller on February 25, 2011 (U.S. Steel's Mueller case brief). Petitioners Allied Tube and Conduit and TMK-IPSCO (Allied/TMK) also filed their case brief on February 25, 2011 (Allied/TMK case brief). Respondent Mueller filed its rebuttal brief on March 9, 2011 (Mueller rebuttal brief). Respondent TUNA also filed its rebuttal brief on March 9, 2011 (TUNA rebuttal brief). Likewise, petitioner U.S. Steel filed its rebuttal brief on March 9, 2011 (U.S. Steel rebuttal brief). Finally, petitioners Allied/TMK filed their rebuttal brief on March 9, 2011 (Allied/TMK rebuttal brief).

In response to Mueller's case brief, the Department issued a letter to Mueller Comercial de Mexico, S. de R.L. de C.V. (Yohai Baisburd) entitled "Administrative Review of Certain Circular Welded Non-Alloy Steel Pipe from Mexico," dated May 12, 2011, in which the Department invited Mueller to propose programming language with regard to weight-averaging certain costs of TUNA and TERNIUM. On May 13, 2011, Mueller submitted its proposed programming language.

Scope of the Order

The products covered by this order are circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses, and generally meet ASTM A-53 specifications. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and related industries. Unfinished conduit pipe is also included in these orders. All carbon steel pipes and tubes within the physical description outlined above are included within the scope of this order, except line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Standard pipe that is dual or triple certified/stenciled that enters the U.S. as line pipe of a kind

used for oil or gas pipelines is also not included in this order.

The merchandise covered by the order and subject to this review are currently classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these proceedings is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by interested parties in this administrative review are addressed in the Issues and Decision Memorandum (Decision Memorandum) from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated June 13, 2011, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in room 7046 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly via the Internet at <http://ia.ita.doc.gov/frn/index.html>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Use of Total Adverse Facts Available

The Department found in the *Preliminary Results* that Ternium failed to cooperate to the best of its ability by withholding information requested by the Department's questionnaire, and thereby impeded the Department's proceeding. See *Preliminary Results*. Therefore, in accordance with section 776(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.308(c), the Department preliminarily selected 48.33 percent as the adverse facts available (AFA) dumping margin. The Department received no comments regarding its preliminary application of the AFA dumping margin to Ternium. For these final results, the Department has not altered its analysis or decision to apply the AFA dumping margin to Ternium. See accompanying Decision

Memorandum for the issues raised by the parties and addressed by the Department.

Changes Since the Preliminary Results

First, consistent with our decision in the post-preliminary calculation (but different from our position in the *Preliminary Results*), we have applied AFA to Ternium's cost information in calculating Mueller's margin for the final results. We apply AFA because of Ternium's failure to cooperate by not acting to the best of its ability to comply with the Department's request for information, in that Ternium repeatedly refused to provide product-specific costs.

Second, as a reasonable alternative in the absence of manufacturer-specific information, we have revised the final calculations to weight-average the control-number-specific costs of Mueller's suppliers based on Mueller's reported resold and processed quantities so as to better reflect Mueller's purchases from its suppliers.

Third, because we do not find that the record evidence supports any contention that the intangible assets were impaired prior to the POR or that expenses would be double-counted and the costs would be distorted, we have included the amount related to other intangible assets in the reported costs for the final results. However, we continue to exclude the impairment loss related to goodwill, consistent with the *Preliminary Results*.

Fourth, because (a) The total G&A expenses from the reported calculation worksheets can be reconciled to the total reported in the 2009 financial statements by adding back other income, and (b) the reported G&A expenses already include the payments made to its parent company for corporate expenses, we have adjusted the reported G&A expense ratio calculation for the final results to exclude the other income amount so as to avoid double-counting.¹

Finally, because the constructed export price (CEP) level of trade (LOT) involves a much more advanced stage of distribution than the NV LOT, it is not possible to make a CEP offset to NV.

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we base NV on sales made in the comparison market at the same LOT as the export transaction. The NV LOT is based on the starting price of

¹ For these final results, we have relied on Mueller's revised G&A expense ratio based on its 2009 audited financial statements, as reported in its supplemental response submitted subsequent to the *Preliminary Results*; see Mueller's January 4, 2011, section D submission at exhibit 11.

sales in the home market or, when NV is based on CV, on the LOT of the sales from which SG&A expenses and profit are derived. With respect to CEP transactions in the U.S. market, the CEP LOT is defined as the level of the constructed sale from the exporter to the importer. See 19 CFR 351.412(c)(1)(ii).

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. See 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil; Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17406, 17410 (April 6, 2005), results unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil*, 70 FR 58683 (October 7, 2005); see also *Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada*, 67 FR 8781 (February 26, 2002), and accompanying Issues and Decisions Memorandum at Comment 8. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d)(3) of the Act. See *Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–15 (Fed. Cir. 2001). We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. See *Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review*, 65 FR 30068 (May 10, 2000), and accompanying Issues and Decisions Memorandum at Comment 6.

Mueller reported it sold circular welded non-alloy steel pipe and tube to end-users and distributors in the home market and to end-users in the United

States. For the home market, Mueller identified two channels of distribution: Direct shipments (channel 1) and warehouse shipments (channel 2). See Mueller's section A response at 14–15 and Exhibit A–5. For the U.S. market, Mueller identified two channels of distribution: Direct sales (channel 1) and indirect sales (channel 2). *Id.* Mueller stated that “a level-of-trade adjustment cannot be established” and requested a CEP offset. See Mueller's section B response at 28.

We obtained information from Mueller regarding the marketing stages involved in making its reported home market and U.S. sales. See Mueller's July 16, 2010, supplemental questionnaire response at 13–19. We reviewed Mueller's claims concerning the intensity to which all selling functions were performed for each home market channel of distribution and customer category. Based on our analysis of all of Mueller's home market selling functions, we conclude that there is a single level of trade in the home market. In the U.S. market, Mueller did not report multiple levels of trade for EP sales. See Mueller's July 16, 2010 supplemental questionnaire response at 13–19. Based on our review of the record, we determine that all EP sales were made at the same LOT.

We compared Mueller's EP level of trade to the single NV level of trade found in the home market. While we find differences in the levels of intensity performed for some of these functions between the home market NV level of trade and the EP level of trade, such differences are minor and do not establish distinct levels of trade between the home market and the U.S. market. Based on our analysis of all of Mueller's home market and EP selling functions, we find these sales were made at the same level of trade.

For CEP sales, Mueller claims that the number and intensity of selling functions performed by Mueller in making its sales to Streamline are lower than the number and intensity of selling functions Mueller performed for its EP sales, and further claims that CEP sales are at a less advanced stage than home market sales. See Mueller's July 16, 2010, supplemental questionnaire response at 13–19.

We compared the NV LOT (based on the selling activities associated with the transactions between Mueller and its customers in the home market) to the CEP LOT (which is based on the selling activities associated with the transaction between Mueller and its affiliated importer, Streamline). Mueller's reported data would indicate that the selling functions performed for home

market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for Streamline. See Mueller's July 16, 2010 supplemental questionnaire response at Exhibit SA–10. For example, in comparing Mueller's selling activities, we find many of the reported selling functions performed in the home market are not performed with respect to CEP sales in the U.S. market. For those selling activities performed for both home market sales and CEP sales, Mueller reported it performed each activity at either the same or at a higher level of intensity in one or both of the home market channels of distribution. *Id.* However, we find that the CEP LOT is more advanced than the NV LOT. At verification, Mueller's personnel indicated that Mueller's CEP sales are at a more advanced marketing stage than are its home market sales. See Mueller Verification Report at page 7. Many of the principal functions in both markets are carried out by employees in the Mexico office. While U.S. employees of Streamline do perform important selling functions, such as contacting customers and negotiating prices, the preponderance of overall selling functions are, in fact, performed by the Mueller employees in Mexico City. The record indicates these employees devote a disproportionate amount of their efforts on CEP sales, despite the fact that both the Mexican home market and EP market are larger than Mueller's CEP market. From our analysis of Mueller's overall selling functions, it is evident that the intensity of activity for the principal functions is greater for CEP sales than other sales. *Id.*; see also Exhibit A–1. Accordingly, we preliminarily determine that the CEP LOT (that is, sales from Mueller to its U.S. affiliate) involves a much more advanced stage of distribution than the NV LOT. See Analysis Memorandum at pages 3–6.

Because we found the home market and U.S. CEP sales were made at different LOTs, we examined whether a LOT adjustment or a CEP offset may be appropriate in this review. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales prices, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the CEP LOT. See 19 CFR 351.412(d)(1)(ii). Furthermore, because the CEP LOT involves a much more advanced stage of distribution than the NV LOT, it is not possible to make a

CEP offset to NV in accordance with section 773(a)(7)(B) of the Act.

On account of these changes, the final dumping margin for Mueller has changed. For a more detailed description of these changes, see the Memorandum from Mark Flessner to the File entitled "Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Post-Preliminary Results Analysis Memorandum for Mueller Comercial, S. de R.L. de C.V.," dated June 13, 2011 (Final Results Analysis Memorandum), which is on file in the Department's Central Records Unit, Room 7046 of the main Commerce building; see also the accompanying Decision Memorandum.

Final Results of Review

We determine the following percentage margin exists for the period November 1, 2008 to October 31, 2009:

Manufacturer/exporter	Weighted-average margin (percentage)
Ternium (formerly known as Hylsa)	48.33
Mueller	19.81

Assessment

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1) of the Act and 19 CFR 351.212(b). We will issue appraisal instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. Pursuant to 19 CFR 356.8(a), the Department intends to issue assessment instructions to CBP 41 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, consistent with section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate listed above; (2) if the exporter is not a firm covered in this review, but was covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV

investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 32.62 percent, the all-others rate established in the LTFV investigation. See *Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Mexico*, 57 FR 42953 (September 17, 1992). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 13, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix—List of Issues in Decision Memorandum

Comment 1: Total AFA for TUNA Because It "should have known" Its Products Were Exported to the United States.

Comment 2: Treatment of "Negative Dumping Margins." (Zeroing)

Comment 3: Partial AFA for Mueller Because of Failure to Report Manufacturer for Sales.

Comment 4: Application of Adverse Inferences to TERNIUM's Reported Information.

Comment 5: Application of Adverse Inferences to TUNA's Reported

Information.

Comment 6: Use of Production Quantities for Calculating Mueller's CONNUM-Specific Costs.

Comment 7: Inclusion of Impairment Losses in General and Administrative Expenses.

Comment 8: Other Minor Revisions to the G&A Expense Ratio.

[FR Doc. 2011-15461 Filed 6-20-11; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 14, 2010, the Department of Commerce (the "Department") published the preliminary results of the administrative review of the antidumping duty order on circular welded non-alloy steel pipe ("CWP") from the Republic of Korea ("Korea"), covering the period November 1, 2008, through October 31, 2009. This review covers six producers/exporters of the subject merchandise to the United States: SeAH Steel Corporation ("SeAH"); Husteel Co., Ltd. ("Husteel"); Nexteel Co. Ltd. ("Nexteel"); Hyundai HYSCO; Kumkang Industrial Co., Ltd.; and A-JU Besteel Co., Ltd. SeAH, Husteel, and Nexteel were the three mandatory respondents. We gave the interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we have made changes to the margin calculations. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

DATES: *Effective Date:* June 21, 2011.

FOR FURTHER INFORMATION CONTACT: Joshua Morris or Matthew Jordan, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1779 or (202) 482-1540, respectively.

SUPPLEMENTARY INFORMATION:

Background

Following publication of *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Preliminary Results of the Antidumping Duty Administrative*

Review, 75 FR 77838 (December 14, 2010) (“*Preliminary Results*”) in the **Federal Register**, we invited parties to comment on the *Preliminary Results*. On January 10, 2011, we received a request from United States Steel Corporation (“U.S. Steel”) to extend the deadline for submitting case briefs. We agreed to extend the deadline to January 31, 2011. We received case briefs from SeAH; Husteel; Nexteel; and U.S. Steel. Nexteel’s initial case brief contained new factual information, and was thus not accepted. Nexteel removed the new factual information and resubmitted its case brief on February 16, 2011. We received rebuttal briefs from Nexteel; Allied Tube and Conduit and TMK IPSCO (“Allied Tube Group”); SeAH; and U.S. Steel.

On March 1, 2011, the Department sought further information from all interested parties regarding grade classification, particularly with respect to ASTM A–53 Grade A and ASTM A–53 Grade B pipe. We received information from SeAH; Nexteel; Nexteel’s U.S. customer; U.S. Steel; Allied Tube Group; and Hyundai HYSCO. The Department allowed for further briefing regarding this grade issue, and we received submissions from SeAH; Nexteel; U.S. Steel; Allied Tube Group; and Hyundai HYSCO. None of the parties requested a hearing.

On March 22, 2011, the Department published in the **Federal Register** an extension of the time limit for the completion of the final results of this review until no later than June 13, 2011, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (“the Act”), and 19 CFR 351.213(h)(2). See *Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Extension of the Final Results of the Antidumping Duty Administrative Review*, 76 FR 15941 (March 22, 2011).

Scope of the Order

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as

structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this review.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department’s *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube From Brazil, the Republic of Korea, Mexico, and Venezuela*, 61 FR 11608 (March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

All issues raised in the case briefs are addressed in the “Issues and Decision Memorandum for the 2008–2009 Administrative Review of Circular Welded Non-Alloy Steel Pipe from the Republic of Korea” (“Issues and Decision Memorandum”), which is dated concurrently with and hereby adopted by this notice. A list of the issues which parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document which is on file in the Central Records Unit in room 7046 in the main Department building, and is accessible on the web at <http://www.ia.ita.doc.gov/fn>. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made the following changes in calculating dumping margins: (1) Eliminated the inadvertent double counting of the major input adjustment for SeAH; (2) changed the universe of sales to be used for margin calculation purposes for SeAH and Husteel to all U.S. sales entered for consumption during the period of review; (3) adjusted the costs for ASTM A–53 Grade B control numbers (“CONNUMs”); specifically, for ASTM A–53 Grade B CONNUMs for which there is an otherwise identical ASTM A–53 Grade A CONNUM, we have weight averaged together the costs of the ASTM A–53 Grade A and Grade B CONNUMs (a) for SeAH, all costs by quarter, using production quantity for weighting purposes, and (b) for Nexteel, the variable costs and total costs (where available) using sales quantity for weighting; however, for ASTM A–53 Grade B CONNUMs for which there is no identical ASTM A–53 Grade A CONNUM, we continue to use the cost as reported for ASTM A–53 Grade B, including where other specifications were reported in the same CONNUM as ASTM A–53 Grade B; 4) for Nexteel, changed the CONNUM of ASTM A–53 Grade B sales to reflect the change in classification of ASTM A–53 Grade B from “pressure” to “ordinary” for product comparison purposes.

Cost of Production

Consistent with the *Preliminary Results*, we disregarded home market sales by SeAH and Husteel that failed the cost-of-production test.

Final Results of the Review

We determine that a weighted-average dumping margin exists for the three mandatory respondents, SeAH, Husteel, and Nexteel, for the period November 1, 2008, through October 31, 2009. Respondents other than mandatory respondents received the weighted-average of the margins calculated for SeAH, Husteel, and Nexteel.

Manufacturer/exporter	Weighted-average margin percent
SeAH Steel Corporation	4.99
Husteel Co., Ltd	2.25
Nexteel Co., Ltd	12.90
Hyundai HYSCO	8.17
Kumkang Industrial Co., Ltd	8.17
A–JU Besteel Co., Ltd	8.17

Public Comment

The Department will disclose calculations performed within five days

of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b).

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (“CBP”) shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP 15 days after the date of publication of these final results of review.

For SeAH and Husteel, we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales, as reported by SeAH and Husteel. See 19 CFR 351.212(b)(1).

Nexteel reported the importer of record for certain of its U.S. sales. Pursuant to 19 CFR 351.212(b)(1), for all sales where Nexteel reported the importer of record, Nexteel submitted the reported entered value of the U.S. sales and the Department has calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

For certain U.S. sales, Nexteel did not report the importer or the entered value. For purposes of calculating importer-specific assessment rates, calculated per-unit duty assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales.

To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), the Department calculated importer-specific *ad valorem* ratios based on the actual or estimated entered value. Where entered values were not reported (for Nexteel), we treated Nexteel’s U.S. customer as the importer of record and we calculated entered value as U.S. price net of international movement expenses.

For the companies that were not selected for individual review, we calculated an assessment rate based on the weighted-average of the cash deposit rates calculated for companies selected for individual review, where those rates were not *de minimis* or based on adverse facts available, in accordance with Department practice.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without

regard to antidumping duties any entries for which the assessment rate is *de minimis* (i.e., less than 0.50 percent).

The Department clarified its “automatic assessment” regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (“*Assessment Policy Notice*”). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediary involved in the transaction. See *Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CWP from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (“LTFV”) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 4.80 percent, the “all others” rate established in the LTFV investigation. See *Notice of Antidumping Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea, Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2,

1992). These deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (“APO”) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 13, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

General Issues

- Comment 1 Zeroing-Out Negative Dumping Margins
- Comment 2 Application of the Cost Recovery Test
- Comment 3 Time for Parties To Comment on Methodology
- Comment 4 Grade Classification
- Comment 5 Universe of Home Market and U.S. Sales for Margin Analysis

SEAH Issues

- Comment 6 Double Counting the Major Input Adjustment
- Comment 7 Letters of Credit Charges

NEXTEEL Issues

- Comment 8 Programming Revisions

[FR Doc. 2011–15453 Filed 6–20–11; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-929]

Small Diameter Graphite Electrodes From the People's Republic of China: Extension of Time Limit for the Final Results of the First Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* June 21, 2011.

FOR FURTHER INFORMATION CONTACT: Frances Veith or Lindsey Novom, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-4295 or (202) 482-5256, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On March 30, 2010, the Department of Commerce ("the Department") initiated the administrative review of the antidumping duty order on small diameter graphite electrodes from the People's Republic of China ("PRC") for the period August 21, 2008, through January 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 75 FR 15679 (March 30, 2010). The preliminary results of this review were published on March 7, 2011. *See Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Results of the First Administrative Review of the Antidumping Duty Order; Partial Rescission of Administrative Review; and Intent To Rescind Administrative Review, in Part*, 76 FR 12325 (March 7, 2011). The final results of this review are currently due by July 5, 2011.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a final determination in an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the 120-day period to 180 days for the final results.

Extension of Time Limit of Final Results

We determine that it is not practicable to complete the final results of this

review within the original time limit because the Department requires additional time to analyze issues raised in post-preliminary factual submissions concerning respondents' U.S. sales databases, case briefs, and rebuttal briefs. Therefore, the Department is extending the time limit for completion of the final results by 60 days. An extension of 60 days from the current deadline of July 5, 2011, would result in a new deadline of September 3, 2011. However, since September 3, 2011, falls on a Saturday, a non-business day, the final results will now be due no later than September 6, 2011, the next business day. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: June 14, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011-15449 Filed 6-20-11; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**International Trade Administration****Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor**

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Announcement for change in methodology.

SUMMARY: This notice addresses the methodology used by the Department of Commerce ("the Department") to value the cost of labor in non-market economy ("NME") countries. After reviewing all comments received on the Department's interim, industry-specific wage calculation methodology that is currently applied in NME antidumping proceedings, the Department has determined that the *single* surrogate-country approach is best. In addition, the Department has decided to use International Labor Organization ("ILO") Yearbook Chapter 6A as its primary source of labor cost data in NME antidumping proceedings.

FOR FURTHER INFORMATION CONTACT: Christopher Mutz, (202) 482-0235, Office of Policy, Import Administration, Julia Hancock, (202) 482-1394, Office of

Antidumping and Countervailing Duty Operations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:**Background**

Section 733(c) of the Tariff Act of 1930, as amended ("the Act"), provides that the Department will value the factors of production ("FOP") in NME cases using the best available information regarding the value of such factors in a market economy ("ME") country or countries considered to be appropriate by the administering authority. The Act requires that when valuing FOP, the Department utilize, to the extent possible, the prices or costs of factors of production in one or more ME countries that are (1) At a comparable level of economic development, and (2) significant producers of comparable merchandise. *See* section 773(c)(4) of the Act.

Previously, the Department used regression-based wages that captured the worldwide relationship between *per capita* Gross National Income ("GNI") and hourly manufacturing wages pursuant to 19 CFR 351.408(c)(3).¹ However, on May 14, 2010, the Court of Appeals for the Federal Circuit ("CAFC"), in *Dorbest Ltd. v. United States*, 604 F.3d 1363, 1372 (Fed. Cir. 2010) ("*Dorbest*"), invalidated 19 CFR 351.408(c)(3). As a consequence of the CAFC's ruling in *Dorbest*, the Department no longer relies on the wage rate methodology described in its regulations.

In July 2010, the Department adopted an interim wage calculation methodology that averages wages across countries that are both economically comparable and significant producers of merchandise comparable to the subject merchandise.² In October 2010, the Department modified this interim methodology to limit the averaging to industry-specific wage rates.³

¹ The Department's regulations at 19 CFR 351.408(c)(3) provided that: For labor, the Secretary will use regression-based rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public.

² *See Certain Woven Electric Blankets From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 38459 (July 2, 2010) ("*Blankets From the PRC*") and accompanying Issues and Decision Memorandum at Comment 13.

³ Between July 2010 and October 2010, the Department implemented an interim wage rate methodology that reflected a simple average of national wage rates from countries found to meet

On February 18, 2011, the Department published a notice in the **Federal Register** requesting comment on the means by which it can best capture all relevant costs in its wage rate calculation in NME antidumping proceedings,⁴ in response to concerns about labor cost undercounting and the interim methodology. As part of this request, the Department invited comments on (1) The labor cost calculation methodology and (2) labor cost data sources.

The Department subsequently received comment from the following parties: (1) Armstrong World Industries (“Armstrong”);⁵ (2) Southern Shrimp Alliance; (3) Domestic Producers;⁶ (4) Domestic Interested Parties;⁷ (5) Ministry of Commerce of the People’s Republic of China (“MOFCOM”); and (6) Vietnam Association of Seafood Exporters and Producers (“VASEP”).

Statement of Policy

Based on the submissions the Department received in response to its request for comment, the Department has revised its labor cost calculation methodology in NME antidumping proceedings initiated on or after the date of publication of this **Federal Register** notice, the Department will base labor cost on ILO Chapter 6A data applicable to the primary surrogate country, rather

both criteria under section 733(c)(4) of the Act. Industry-specific data, if available, are now the presumptive surrogate data used in the Department’s calculations. See *Certain New Pneumatic Off-the-Road-Tires From the People’s Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 64259 (October 19, 2010) (“*Tires From the PRC*”); See also *Certain Activated Carbon From the People’s Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review*, 75 FR 70208 (November 18, 2010) (“*Activated Carbon Final*”) and accompanying Issues and Decision Memorandum at Comment 4f.

⁴ See *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor; Request for Comment*, 76 FR 9544 (February 18, 2011).

⁵ Armstrong is a domestic manufacturer of floors, ceilings, and cabinets.

⁶ American Honey Producers Association, American Spring Wire Corp., Christopher Ranch, LLC, Council Tool Company, Inc., DAK Americas, LLC, East Jordan Iron Works, Inc., The Garlic Company, Insteel Wire Products Company, Neenah Foundry Company, Nashville Wire Products, Inc., Norit Americas Inc., SGL Carbon LLC, Sioux Honey Association, Superior SSW Holding Co., Inc., Sumiden Wire Products Corp., U.S. Foundry & Manufacturing Co., Valley Garlic, and Vessey and Company.

⁷ American Furniture Manufacturers Committee for Legal Trade and its individual members; the Polyethylene Retail Carrier Bag Committee and its individual members; the Laminated Woven Sacks Committee and its individual members; U.S. Magnesium LLC; and Bridgestone Americas, Inc. and Bridgestone Americas Tire Operations, LLC.

than the Chapter 5B it currently uses. For ongoing NME proceedings, the Department expects to consider on a case-by-case basis whether it is feasible to implement the new labor methodology within statutory deadlines.

A. Single Surrogate Country Wage Rate

Due to the variability in wage rates among economically comparable MEs, the Department has tried to include wage data from as many countries as possible that were also economically comparable to the NME and significant producers of comparable merchandise, within the meaning of section 773(c)(4) of the Act. Following the Federal Circuit’s decision in *Dorbest*, the Department attempted to balance its desire for multiple data points with the statutory requirements that FOP data be from countries that are both economically comparable and significant producers. See section 773(c)(4)(A) and (B) of the Act. While the amount of available data was more constrained as a result of the *Dorbest* decision, the Department determined that the industry-specific interim methodology still provided the best available wage rate because it allowed for multiple data points, and adhered to the constraints set forth in the statute. Under this methodology, the Department considered countries that exported comparable merchandise to be “significant producers.” However, in *Shandong Rongxin*, the U.S. Court of International Trade (“CIT”) found the Department’s sole reliance on exports alone to define “significant producers” impermissible and unsupported.⁸

The Department has carefully considered the “significant producer” prong of the statute (section 773(c)(4)(B) of the Act) in light of the CIT’s decision in *Shandong Rongxin*, where the court imposed an even further restriction on the “significant producer” definition. Upon careful examination of our options in light of *Shandong Rongxin*, we consider that any alternative definition for “significant producer” that would also be compliant with the court’s decision would unduly restrict the number of countries from which the Department could source wage data. We therefore find that the base for an average wage calculation would be so limited that there would be little, if any, benefit to relying on an average of wages from multiple countries for purposes of minimizing the variability that occurs in wages across countries. Therefore, in light of both the Federal Circuit’s

⁸ See *Shandong Rongxin Import & Export Co., Ltd. v. United States*, Slip Op. 11–45 (April 21, 2011) (“*Shandong Rongxin*”).

decision in *Dorbest*, and the CIT’s recent decision in *Shandong Rongxin*, we find that relying on multiple countries to calculate the wage rate is no longer the best approach for calculating the labor value.

Accordingly, the Department finds that using the data on industry-specific wages from the primary surrogate country is the best approach for valuing the labor input in NME antidumping duty proceedings. It is fully consistent with how the Department values all other FOPs, and it results in the use of a uniform basis for FOP valuation—a single surrogate.

B. ILO Chapter 6A Data Source

The Department currently uses ILO Chapter 5B data in its NME labor input cost calculations. Unlike Chapter 6A data that reflects all costs related to labor including wages, benefits, housing, training, etc., Chapter 5B data reflects only direct compensation and bonuses. The Department also adjusts, when possible, the calculated factory overhead ratio to reflect all indirect labor costs (e.g., employee pension benefits, worker training) itemized in the company’s financial statement.⁹ While the Department’s ability to identify and adjust for indirect labor costs depends on the information available on the record of the specific proceeding, when the Department is able to make the necessary adjustments, both direct and indirect labor costs are accounted for. See *Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments*, 71 FR 61716, 61721 (October 19, 2006).

When indirect labor costs items are not itemized and not (by definition) reflected in Chapter 5B data, a concern with under-counting arises. While there are some cases in which available information permits the Department to make adjustments that ensure a full and complete accounting of all direct and indirect labor costs, there are many other cases in which data constraints preclude such adjustments. For this reason, the Department has decided to change to the use of Chapter 6A data, on the rebuttable presumption that Chapter 6A data better accounts for all direct and indirect labor costs. In their comments, MOFCOM and VASEP argue that use of ILO Chapter 6A would result in overstating labor costs. To address this concern, the Department will adjust

⁹ See *Folding Metal Tables and Chairs From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 2905 (January 18, 2006) and accompanying Issues and Decision Memorandum, at Comment 1.

the surrogate financial ratios when the available record information—in the form of itemized indirect labor costs—demonstrates that labor costs are overstated. The Department notes that the use of a single surrogate country for labor input valuation purposes renders moot concerns expressed by MOFCOM and VASEP that ILO Chapter 6A data is only available for a limited number of countries.

Calculation of Labor Surrogate Value

Pursuant to the comments received and the Department's analysis thereof, the Department will value the NME respondent's labor input using industry-specific labor costs prevailing in the primary surrogate country, as reported in Chapter 6A of the ILO Yearbook of Labor Statistics. The following explains this single country wage rate methodology in more detail.

The ILO collects labor cost data by country and industry, which is reported on the basis of the United Nations' International Standard Classification of All Economic Activities ("ISIC").¹⁰ The industry-specific data is revised periodically, and not all revisions report data for all industries. The Department will make every attempt to identify and review relevant industry-specific wages in the primary surrogate country that are as contemporaneous as possible with the period of investigation. To determine the most appropriate labor cost data to use, the Department applies a number of filters.¹¹ The Department

¹⁰ The ISIC identifies different industry classifications. The ISIC provides industry classifications by section (*i.e.*, A—Agriculture, hunting, and forestry), then at the two-digit division level (*i.e.*, 01A—Agriculture, hunting, and related service activities), then further sub-detail at the three-digit major group level (*i.e.*, 011—Growing of crops; market gardening; horticulture), and sometimes a four-digit group level (*i.e.*, 0111—Growing of cereals and other crops, nec.). There are explanatory notes at the two-digit division level, three-digit major group level, and four-digit group level that provide a detailed list of the industries covered in and excluded from each classification. The ISIC also has different revisions of this classification system: Rev. 2 (1968); Rev. 3 (1989); Rev. 3.1 (2002); and Rev. 4 (2008).

¹¹ The Department sorts the ILO data based on data parameters in the following order:

1. "Sub-classification," *i.e.*, If there is no industry-specific data available for the surrogate country within the primary data source, *i.e.*, ILO Chapter 6A data, the Department will then look to national data for the surrogate country for calculating the wage rate;
2. "Type of Data," *i.e.*, reported under categories compensation of employees and labor cost. We use labor cost data if available and compensation of employees where labor cost data are not available;
3. "Contemporaneity," *i.e.*, the Department uses the most recent earnings/wage rate data point available;
4. The unit of time for which the wage is reported. The Department selects from the following categories in the following hierarchy: (1)

inflates the selected earnings data to the year that covers the majority of the period of the proceeding using the relevant Consumer Price Index.¹² Next, the Department converts the inflation-adjusted hourly wage rate data for the surrogate country, which is denominated in that country's national currency, to U.S. dollars using annual exchange rates¹³ as reported by the International Monetary Fund ("IMF")'s *International Financial Statistics* ("IFS") for the year that covers the majority of the period of investigation or review. The Department will then use this hourly earnings rate, denominated in U.S. dollars, to value the NME respondent's cost of labor for that proceeding.

Finally, the Department will determine whether the facts and information available on the record warrant and permit an adjustment to the surrogate financial statements on a case-by-case basis. If there is evidence submitted on the record by interested parties demonstrating that the NME respondent's cost of labor is overstated, the Department will make the appropriate adjustments to the surrogate financial statements subject to the available information on the record. Specifically, when the surrogate financial statements include disaggregated overhead and selling, general and administrative expense items that are already included in the ILO's definition of Chapter 6A data, the Department will remove these identifiable costs items.

Implementation

The approach detailed above will be applied to ongoing administrative NME proceedings where the statutory deadlines permit.

Dated: June 10, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011-15464 Filed 6-20-11; 8:45 am]

BILLING CODE 3510-DS-P

per hour; (2) per day; (3) per week; or (4) per month. Where data is not available on a per-hour basis, the Department converts that data to an hourly basis based on the premise that there are 8 working hours per day, 5.5 working days a week and 24 working days per month.

¹² See <http://www.imfstatistics.org/imf>.

¹³ The exchange rate for each country is obtained from the IMF's IFS database by selecting: (1) "Economic Concept View"; (2) "Country Exchange Rates"; (3) "National Currency per US\$ (Per Avg)"; and (4) "RF.ZF NC/US\$, Period Average."

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Draft NOAA Scientific Integrity Policy and Handbook; Availability

AGENCY: Office of Oceanic and Atmospheric Research (OAR) National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Draft NOAA Scientific Integrity Policy and Handbook for Public Review.

SUMMARY: NOAA's draft scientific integrity policy is available for public review and comment until August 20, 2011. The draft incorporates the principles of scientific integrity contained in the President's March 9, 2009, memorandum and Office of Science and Technology Policy (OSTP) director, John Holdren's December 17, 2010, memorandum on scientific integrity, and addresses how NOAA ensures quality science in its methods, review, and other aspects. NOAA also seeks comments on the accompanying handbook that outlines procedures to respond to allegations of misconduct.

ADDRESSES: Both draft documents can be found electronically at: <http://www.noaa.gov/scientificintegrity>. Those without computer access can call 301-734-1186 to request a copy of the draft policy and handbook and instructions for returning written comments by U.S. Postal Service.

FOR FURTHER INFORMATION CONTACT: The NOAA Scientific Integrity team at integrity.noaa@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Presidential Memorandum on Scientific Integrity dated March 9, 2009, and the Office of Science and Technology Policy 2010 guidance memorandum on scientific integrity call for ensuring the highest level of integrity in all aspects of the executive branch's involvement with scientific and technological processes.

The draft NOAA policy:

- Lays out formal guidance with a "Code of Conduct";
- Creates the conditions for enabling first-rate science and guarding against attempts to undermine or discredit it;
- States the key role of science in informing policy;
- Encourages scientists to publish data and findings to advance science, their careers, and NOAA's reputation for reliable science;
- Encourages NOAA scientists to be leaders in the scientific community;

- Provides whistle-blower protection;
- Applies to all NOAA employees and provides applicable policies for contractors and grantees who are engaged in, supervise, or manage scientific activities, analyze and/or publicly communicate information resulting from scientific activities, or use scientific information or analyses in making bureau or office policy, management, or regulatory decisions;
- Includes a training component.

Dated: June 16, 2011.

Terry Bevels,

Deputy Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2011-15435 Filed 6-20-11; 8:45 am]

BILLING CODE 3510-KD-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD-2010-OS-0034]

Defense Transportation Regulation, Part IV

AGENCY: United States Transportation Command (USTRANSCOM), DoD.

ACTION: Announcement.

SUMMARY: Reference **Federal Register** Notice (FRN), Docket ID: DOD-2010-OS-0034, published April 1, 2010 (75 FR 16445-16446). DOD has completed their review and response to comments received in connection with the Defense Personal Property Program (DP3) Phase III Domestic Small Shipments (dS2) and Nontemporary Storage (NTS) draft business rules. Responses can be found on the Defense Transportation Regulation, Part IV Web site at <http://www.transcom.mil/dtr/part-iv/phaseiii.cfm>. All identified changes have been incorporated into the final dS2 and NTS business rules. Implementation timelines will be based on completion of Defense Personal Property System (DPS) Phase III programming projected for FY15 (dS2) and FY16 (NTS).

FOR FURTHER INFORMATION CONTACT:

Mr. Jim Teague, United States Transportation Command, TCJ5/4-PI, 508 Scott Drive, Scott Air Force Base, IL 62225-5357; (618) 256-9605.

SUPPLEMENTARY INFORMATION: Any subsequent modification(s) to the business rules beyond the above stated changes will be published in the **Federal Register** and incorporated into the Defense Transportation Regulation (DTR) Part IV (DTR 4500.9R). These program requirements do not impose a legal requirement, obligation, sanction

or penalty on the public sector, and will not have an economic impact of \$100 million or more.

A complete version of the DTR is available via the internet on the USTRANSCOM homepage at http://www.transcom.mil/j5/pt/dtr_part_iv.cfm.

Dated: June 10, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011-15363 Filed 6-20-11; 8:45 am]

BILLING CODE 5001-06-P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Meeting

AGENCY: Delaware River Basin Commission ("DRBC").

ACTION: Public meeting.

SUMMARY: The DRBC will hold a public meeting via teleconference for the purposes of adopting its annual Capital and Current Expense Budgets for the fiscal year ending June 30, 2012 and establishing a budget and finance committee. A public hearing on the fiscal year 2012 budgets was held previously, on March 2, 2011.

DATES: The public meeting via teleconference will take place on Tuesday, June 28, 2011 at 1 p.m. and is expected to last for less than one hour.

ADDRESSES: The DRBC will provide public access to the teleconference from the Goddard Room of the Commission's office building at 25 State Police Drive in West Trenton, New Jersey. Directions can be found on the Commission's Web site at <http://www.drbc.net>.

SUPPLEMENTARY INFORMATION: Section 13.3 of the *Delaware River Basin Compact* provides that the Commission shall annually adopt a capital budget and a current expense budget. Section 14.4(b) of the *Compact* requires that the Commission conduct a public hearing before adopting the annual budgets. The required public hearing took place on March 2, 2011.

The Commission also will establish a budget and finance committee consisting of representatives of each of the Commission's five signatories, to provide closer oversight of budget development at a time when the fiscal challenges facing the Commission and state agencies are particularly severe.

The meeting via teleconference is open to the public but will not include a public hearing, since such a hearing already was conducted. At the discretion of the Chair (currently

Governor Jack Markell of Delaware, or his alternate), the Commission may entertain questions from the public before or after the business at hand is completed.

The proposed budget resolution and accompanying budget document are available on the Commission's Web site at <http://www.drbc.net>.

FOR FURTHER INFORMATION CONTACT:

Pamela M. Bush, Commission Secretary and Assistant General Counsel, DRBC, at pamela.bush@drbc.state.nj.us.

Dated: June 14, 2011.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 2011-15331 Filed 6-20-11; 8:45 am]

BILLING CODE 6360-01-P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13).

DATES: Interested persons are invited to submit comments on or before July 21, 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 oir_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: June 16, 2011.

James Hyler,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: Program for International Student Assessments (PISA) 2012 Main Study.

OMB Control Number: 1850-0755.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 15,744.

Total Estimated Annual Burden Hours: 8,888.

Abstract: The Program for International Student Assessment (PISA) is an international assessment that focuses on 15-year-olds' capabilities in reading, mathematics, and science literacy. It was first implemented by the National Center for Education Statistics (NCES) in 2000 and has been administered every 3 years since. This submission is for the fifth cycle in the series, PISA 2012, and requests OMB approval for the main study recruitment and data collection, and for student contact information collection for a future follow-up study. As in 2003, in PISA 2012, mathematics will be the major subject domain. The field test will also include computer-based assessments in reading, science, and general problem solving, and an assessment of financial literacy in a paper-and-pencil format. In addition to assessment data, PISA provides background information on school context and student demographics to benchmark performance and inform policy. School recruitment for the field test will begin in September 2011 with data collection beginning in September 2012. NCES will submit to OMB the final versions of the main study data collection instruments in March 2012.

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 website at <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 4650. 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. 2011-15417 Filed 6-20-11; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104-13).

DATES: Interested persons are invited to submit comments on or before July 21, 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 oir_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: June 16, 2011.

James Hyler,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: 2011-12 National Postsecondary Student Aid Study (NPSAS:12) Full Scale Lists and Contacting.

OMB Control Number: 1850-0666.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions.

Total Estimated Number of Annual Responses: 4,665.

Total Estimated Annual Burden Hours: 4,128.

Abstract: National Postsecondary Student Aid Study (NPSAS), a nationally representative study of how students and their families finance education beyond high school, was first implemented by the National Center for Education Statistics in 1987 and has been fielded every 3 to 4 years since. This submission is for contacting respondents and collection of data from institutions in the eighth cycle in the series, NPSAS:12, and follows approvals for NPSAS:12 field test institutional and student data collections (OMB# 1850-0666 v. 7 & 8). NPSAS:12 will also serve as the base year study for the Beginning Postsecondary Students Longitudinal Study (BPS) of first-time postsecondary students that will focus on issues of persistence, degree attainment, and employment outcome. BPS will conduct follow-up studies in 2014 and 2017, with revised strata for institution sampling to reflect the recent growth in enrollment in for-profit 4-year institutions. Institution contacting for the full scale collection will begin in September 2011, list collection will be

conducted January through June 2012, and student data collection will take place January through September 2012. This submission requests approval for contacting institutions and students, list sampling, obtaining student enrollment lists and institution record data for the full-scale NPSAS:12. A separate request for review pertaining to student record data collection, the student interview, and post-data collection administrative record matching will be submitted in September 2011.

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 4636. 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, D.C. 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. 2011-15418 Filed 6-20-11; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare a Programmatic Environmental Impact Statement for the U.S. Department of Energy Uranium Leasing Program

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent to prepare a programmatic environmental impact statement for the DOE Uranium Leasing Program.

SUMMARY: DOE announces its intent to prepare a Programmatic Environmental Impact Statement (PEIS), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality's (CEQ) NEPA regulations (40 CFR Parts 1500-1508), and DOE's NEPA implementing procedures (10 CFR part 1021), to analyze the reasonably foreseeable environmental impacts, including the site-specific impacts, of

alternatives for the management of DOE's Uranium Leasing Program (ULP), under which DOE administers tracts of land for the exploration, development, and extraction of uranium and vanadium ores. DOE's ULP includes tracts of land located in Mesa, Montrose, and San Miguel counties in western Colorado that cover a cumulative acreage of approximately 25,000 acres. In July 2007, DOE issued a Programmatic Environmental Assessment (PEA) for the ULP (DOE/EA-1535) (available at http://www.lm.doe.gov/land/sites/uranium_leasing/uranium_leasing.htm), in which it examined three alternatives for the management of the ULP for the next ten years. In that same month, DOE issued a Finding of No Significant Impact (FONSI) (available at <http://nepa.energy.gov/documents/EA-1535FONSI.pdf>), in which DOE announced its decision to proceed with the preferred "Expanded Program Alternative" that was examined in its July 2007 PEA, and also determined that the preparation of an Environmental Impact Statement (EIS) was not required.

DOE has determined that, in light of the site-specific information that DOE has gathered as a result of the site-specific agency actions proposed and approved pursuant to the July 2007 PEA/FONSI, it is now appropriate for DOE to prepare a PEIS in order to analyze the reasonably foreseeable environmental impacts, including the site-specific impacts, of a range of alternatives for the management of the ULP for the remainder of the ten-year period that was covered by the July 2007 PEA.

DOE is issuing this Notice of Intent (NOI) to inform interested parties of this PEIS and to invite public comments on its proposed scope, including the preliminary range of alternatives and environmental issues to be considered. DOE plans to invite Federal, state, and local governmental agencies with jurisdiction by law or special expertise to participate as cooperating agencies in preparing the PEIS.

DATES: DOE invites comments on the proposed scope of the PEIS. To ensure consideration, comments must be submitted by August 22, 2011. DOE will consider comments e-mailed or postmarked after that date to the extent practicable. In addition to receiving written comments (*see ADDRESSES* below), DOE will conduct public scoping meetings during which interested government agencies, Native American tribes, private-sector organizations, and the general public are

invited to present oral and written comments. DOE will announce the dates, times, and locations of the public scoping meetings in a separate **Federal Register** notice and in local news media at least 15 days before the meetings.

ADDRESSES: Written comments on the scope of the PEIS and requests to be included in future communications should be addressed to the ULP Program Manager, Ms. Laura Kilpatrick, Esq., Realty Officer, Asset Management Team, Office of Legacy Management, U.S. Department of Energy, 11025 Dover Street, Suite 1000, Westminster, CO 80021, 720-880-4338, laura.kilpatrick@lm.doe.gov.

FOR FURTHER INFORMATION CONTACT: For further information about this PEIS, please contact the ULP Program Manager, Ms. Laura Kilpatrick, at the addresses listed above.

For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (GC-54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202-586-4600); fax (202-586-7031); or leave a toll-free message (1-800-472-2756).

SUPPLEMENTARY INFORMATION:

Background

Congress directed DOE's predecessor agency, the U.S. Atomic Energy Commission (AEC), to develop a supply of domestic uranium that would adequately meet the Nation's defense needs (42 U.S.C. 2096-2097). Congress gave to AEC the authority to withdraw Federal lands for the exploration and development of a viable domestic uranium source under a variety of programs that were carried forward in the Atomic Energy Act of 1954. Around the same time, the U.S. Bureau of Land Management (BLM) issued Public Land Order (PLO) 459 that stated, "Subject to valid existing rights and existing withdrawals, the public lands and the minerals reserved to the United States in the patented lands in the following areas in Colorado are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining laws but not the mineral-leasing laws, and reserved for the use of the United States Atomic Energy Commission." The areas under consideration are located in western Colorado in Mesa, Montrose, and San Miguel counties. Subsequently, other PLOs increased or decreased the total acreage in withdrawn status.

In addition, the Federal Government, through the Union Mines Development Corporation, acquired a substantial

number of patented and unpatented mining claims, milling, tunnel sites, and agricultural patents, until the aggregated acreage managed by AEC totaled approximately 25,000 acres.

The Mineral Leasing Program, which was in operation from approximately 1949 to 1962, produced more than 1.2 million pounds of uranium and 6.8 million pounds of vanadium, and generated \$5.9 million in royalties to the Federal Government. When the program ended in 1962, AEC directed the lessees to close the mines, but little was done to reclaim the mine sites.

AEC initiated a second leasing program in 1974 under the Domestic Uranium Program regulations (10 CFR 760.1) that was called the Uranium Lease Management Program (ULMP). This program was designed to address the lack of production capacity of uranium—and vanadium—bearing ores for the U.S. Government defense needs, and emphasized the need for uranium in the expanding commercial nuclear energy market. The two main goals of the ULMP were to recover the resources that had been developed initially by AEC and to improve the prospects for continued mill operations, thereby encouraging further exploration and development on privately-held land. In preparation for the ULMP in 1972, AEC evaluated potential environmental and economic impacts related to the ULMP in the *Environmental Statement: Leasing of AEC Controlled Uranium Bearing Lands*. AEC and its successor agencies, the U.S. Energy Research and Development Administration and DOE, administered the ULMP. In 1984, DOE renewed the lease agreements for a second ten-year term.

During the ULMP, DOE and BLM acknowledged that each agency had defined jurisdictional authority over the various activities that could be conducted on the lease tracts. DOE maintained jurisdiction and authority over all activities on withdrawn lands associated with uranium and vanadium mining, including exploration, development, extraction (mining), and transportation. BLM maintained jurisdiction and authority over all other surface uses. This acknowledgment of the agencies' jurisdiction continues today.

In July 1995, DOE prepared a programmatic environmental assessment (PEA) to inform DOE's determination whether the leasing program should continue. DOE then issued a FONSI in August 1995, in which it determined to continue the ULP. DOE subsequently entered into negotiations with the previous lessees. Seven of the lessees informed DOE that

they did not wish to continue with the program and began reclamation of their lease tracts. DOE then entered into 13 new lease agreements with the remaining lessees.

In 2005, DOE initiated a review of its 1995 PEA, and began to prepare a new PEA to evaluate the continuation of the ULP. In the July 2007 PEA, DOE examined three alternatives for the management of the ULP for the next ten years, including DOE's preferred "Expanded Program Alternative," under which DOE would continue and expand the existing ULP. Under that alternative, DOE would extend the 13 existing leases for a ten-year period, and then expand the ULP to include the competitive offering of up to 25 additional lease tracts to the domestic uranium industry. In the July 2007 FONSI, DOE announced its decision to proceed with the Expanded Program Alternative. DOE determined that the Expanded Program Alternative would not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of NEPA; and, therefore, that preparation of an EIS was not required.

After the issuance of the July 2007 PEA and FONSI, DOE took a series of site-specific agency actions to implement the ULP. These actions included: Entering into new lease agreements for 31 lease tracts after reconfiguring the expanded number of tracts from 38 to 31 (currently, 29 tracts are actively held under lease, and the remaining two tracts are not leased), approval of exploration plans on some leases, and approval of reclamation-in-lieu-of-royalties (RILOR) plans on some leases (under which a lessee agreed to perform necessary reclamation services on its lease, and in return DOE agreed to reduce the amount of royalties that the lessee must pay to the U.S. Government). DOE reviewed each of the exploration plans and RILOR plans in accordance with DOE's NEPA regulations, and determined that each of the plans was categorically excluded from further environmental evaluation under categorical exclusions set forth in DOE's NEPA regulations. DOE has not received any mining plans from any of its ULP lessees; and no mining activities are currently being performed on any of the ULP leases.

DOE believes that in light of the site-specific information that it has gathered as a result of the site-specific agency actions proposed and approved pursuant to the July 2007 PEA and FONSI, it is now appropriate to prepare a PEIS in order to analyze the reasonably foreseeable environmental impacts, including the site-specific

impacts, of a range of alternatives for the management of the ULP for the remainder of the ten-year period that was covered by the July 2007 PEA. DOE's preparation of this PEIS is in accordance with DOE's NEPA regulation at 10 CFR 1021.300(b), which provides that DOE may prepare a NEPA document for any DOE action at any time in order to further the purposes of NEPA, and may do so "to analyze the consequences of ongoing activities, support DOE planning, assess the need for mitigation, fully disclose the potential environmental consequences of DOE actions, or for any other reason."

DOE is separately preparing to enter into consultation with the U.S. Fish and Wildlife Service, in compliance with Section 7 of the Endangered Species Act, concerning DOE's management of the ULP.

The ULP lease tracts are located in the western portions of Mesa, Montrose, and San Miguel Counties, in western Colorado. Elevations of the mesas and valleys throughout this semiarid area vary from 5,500 feet above sea level in the valleys to approximately 8,000 feet above sea level on top of the higher mesas. Except for the cities of Montrose and Grand Junction, which are each more than 50 miles from the nearest lease tract, the region is sparsely populated and has few towns.

The lease tracts are located in four geographical areas referred to as the Gateway, Uravan, Paradox Valley, and Slick Rock lease tracts. The Gateway lease tracts are remotely located on the tops and side slopes of Outlaw and Calamity Mesas; surface runoff from these areas travels through Maverick and Calamity Creeks, which are tributaries of the Dolores River. The Uravan lease tracts in Montrose County are located on the tops and side slopes of Spring Creek, Atkinson, and Club Mesas, near the historical community of Uravan, which has only two remaining buildings. The Dolores River and its main tributary, the San Miguel River, flow in the valley bottoms below the lease tracts. The Paradox Valley lease tracts are in Montrose and San Miguel Counties in a broad valley flanked by the high plateaus of Monogram Mesa and Long Park. The Slick Rock lease tracts are located near the historical community of Slick Rock in San Miguel County. In this area the land surface is deeply incised by the Dolores River and its tributaries; the Dolores River Canyon in this area is approximately 500 feet wide at the bottom and is characterized by steep slopes and sheer cliffs.

Land use on and around the ULP lease tracts include mining, oil and gas exploration and production, timber

harvesting, recreation, agriculture, and grazing. DOE and BLM administer the lands within the lease tract boundaries. Considerable mineral exploration and development has occurred historically in the lease tract areas. Mined minerals have included coal, oil and gas, sand and gravel, radium, uranium, and vanadium; uranium and vanadium mining, and oil and gas exploration, are the predominant mineral activities. Sections of the more active lease tracts, such as in Paradox Valley, have been substantially mined and are restricted from public access; other tracts remain open for other surface and subsurface uses. The public uses many of the unimproved roads around and near some of the lease tracts for recreational purposes, grazing, and general ranching.

Purpose and Need for Agency Action

In light of the site-specific information that DOE has gathered as a result of the site-specific agency actions proposed and approved pursuant to the July 2007 ULP PEA/FONSI, it is now appropriate for DOE to prepare a PEIS in order to analyze the reasonably foreseeable environmental impacts, including the site-specific impacts, of the range of reasonable alternatives for the management of the ULP for the remainder of the ten-year period that was covered by the July 2007 PEA.

The underlying purpose and need for agency action is that, in support of the Energy Policy Act of 2005 (Pub. L. 109-58), which emphasized the reestablishment of nuclear power (Sections 601 through 657), DOE needs to determine the future course of the ULP, including whether to continue leasing some or all of DOE's withdrawn lands and government-owned patented claims (referred to as "DOE-managed lands") for the exploration and production of uranium and vanadium ores for the remainder of the ten-year period that was covered by the July 2007 PEA. The Domestic Uranium Program regulation (10 CFR 760.1) gives DOE the flexibility to continue leasing these DOE-managed lands via a competitive bidding process to achieve the highest returns for the government. A key element in this determination is the analysis of environmental impacts attributable to lease tract operations and associated activities. Therefore, DOE will prepare this PEIS to provide such information to decision-makers, as well as to the public.

Proposed Action

DOE's proposed action is to decide whether to continue the ULP for the remainder of the ten-year period covered by the July 2007 PEA; and, if it

decides to continue the ULP, to determine which alternative to adopt in order to manage the ULP during that period.

Alternatives

As required by the CEQ and DOE NEPA implementing procedures, at 40 CFR parts 1500-1508 and 10 CFR part 1021, respectively, DOE will analyze the range of reasonable alternatives for continuation of the ULP. In accordance with CEQ's NEPA implementing procedures at 40 CFR 1508.25(b), DOE will also analyze the "no action" alternative. DOE proposes that the alternatives to be analyzed in the PEIS include the following:

(1) DOE would terminate the leases for the ULP; lessees would be required to reclaim their operations on their respective leases; and, once final reclamation activities were completed, DOE would continue its management of the withdrawn lands, without leasing, in accordance with applicable requirements.

(2) DOE would terminate the leases for the ULP; lessees would be required to reclaim their operations on their respective leases; and, once final reclamation activities were completed, all lands would be restored to the public domain with the approval of BLM and under BLM's administrative control, and DOE's leasing program would end.

(3) DOE would continue the ULP as it existed before the issuance of the July 2007 PEA/FONSI; the 13 then-active leases would be continued for the ten-year period covered by the July 2007 PEA/FONSI, or for another reasonable period; and DOE would terminate the leases for the remaining leases tracts. Regarding the leases that would be terminated, DOE would follow the procedures proposed either in alternative (1) above, or in alternative (2) above. Regarding the 13 leases that would be continued, the lessees would be allowed to file plans to explore for and mine uranium and vanadium ore reserves on their respective tracts, and to engage in reclamation activities on those tracts. For those 13 leases, DOE would analyze, among other things, the reasonably foreseeable environmental impacts, including the site-specific impacts, of leasing, exploration, mining activities (including any resumption of mining activities that were previously approved), transportation, and reclamation, as well as cumulative impacts resulting from the incremental impacts of those actions when added to other past, present, and reasonably foreseeable future actions. DOE would explore reasonable mitigation measures

to avoid or minimize potential environmental impacts.

(4) DOE would continue the ULP for the expanded number of leases in the July 2007 PEA/FONSI; the expanded number of leases would be continued for the ten-year period covered by the July 2007 PEA/FONSI, or for another reasonable period. For all of those ULP leases, the lessees would be allowed to file plans to explore for and mine uranium and vanadium ore reserves on their respective tracts, and to engage in reclamation activities on those tracts. DOE would analyze, among other things, the reasonably foreseeable environmental impacts, including the site-specific impacts, of leasing, exploration, mining activities (including any resumption of mining activities that were previously approved), transportation, and reclamation, as well as cumulative impacts resulting from the incremental impacts of those actions when added to other past, present, and reasonably foreseeable future actions. DOE would explore reasonable mitigation measures to avoid or minimize potential environmental impacts.

(5) DOE would continue the ULP exactly as it was approved in the July 2007 PEA/FONSI, and would continue to approve plans by lessees as it has done since the issuance of the July 2007 PEA/FONSI.

Alternative (5) would be the "no action" alternative in the PEIS.

Preliminary Identification of Environmental Issues

DOE proposes to address the environmental issues listed below. This list is neither intended to be all-inclusive, nor a predetermined set of potential impacts. DOE invites comments on whether this is an appropriate list of issues that should be considered in the PEIS. The preliminary list of potentially affected resources or activities and their related environmental issues includes:

Biological resources: including potential impacts to vegetation, wildlife, threatened or endangered species, migratory birds, and ecologically sensitive habitats;

Water resources: potential impacts on surface water and ground water;

Cultural and historic resources;

Floodplains and wetlands: DOE will assess potential impacts of actions that may occur in a floodplain or wetland in accordance with DOE floodplain and wetland environmental review requirements (10 CFR part 1022). (Portions of three lease tracts are located within the 100-year floodplain of the Dolores River.);

Socioeconomics: potential impacts to schools, housing, public services, and local revenues, including the creation of jobs;

Transportation: including potential impacts on transportation corridors;

Accidents and intentional destructive acts;

Air quality: including potential impacts on regional air quality and climate change;

Land use: potential impacts on mining, recreation, timber harvesting, agriculture, grazing, and soils;

Environmental justice: potential for disproportionately high and adverse impacts on minority and low-income populations;

Noise and light: potential disturbance impacts from construction, transportation of materials, and operations;

Wilderness areas; Wild and scenic rivers: DOE will assess potential impacts on the Dolores River Canyon Wilderness Study Area from increased activity and mining on portions of three lease tracts, and potential impacts on the Dolores River and San Miguel River;

Visual resources;

Human health and safety: including potential impacts from public exposure to radioactive or hazardous materials, traffic accidents, land subsidence, and other potential hazards;

Cumulative impacts: for each alternative DOE will assess potential effects that could result from the incremental impacts of the action when added to other past, present, and reasonably foreseeable future actions.

Public Scoping Process

This NOI initiates the scoping process under NEPA, which will guide the development of the Draft PEIS. To ensure that all issues related to DOE's proposed action are addressed, DOE invites public comments on the scope of the PEIS. Interested government agencies, Native American tribes, private-sector organizations, and the general public are encouraged to submit comments or suggestions on the scope of the PEIS, including potential issues and environmental impacts that should be addressed and the alternatives that should be considered. The scoping period will end August 22, 2011. Comments should be submitted by that date to ensure consideration (*see ADDRESSES* above). DOE will consider comments e-mailed or postmarked after that date to the extent practicable.

DOE will conduct public scoping meetings in the vicinity of the ULP lease tracts at dates, times, and locations to be announced in a separate **Federal Register** notice and in local news media

at least 15 days before the meetings. Oral comments will be heard during the formal portion of the scoping meetings. The public is also invited to learn more about the project at an informal session at each location. DOE requests that anyone who wishes to speak at the public scoping meetings should contact Ms. Laura Kilpatrick, by e-mail or postal mail (*see ADDRESSES* above).

Those who do not arrange in advance to speak may register at the meeting (preferably at the beginning of the meeting) and would be given an opportunity to speak after previously scheduled speakers. Speakers will be given approximately five minutes to present their comments. Those speakers who want more than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, DOE may need to limit all speakers to five minutes initially and provide additional opportunity as time permits. Individuals may also provide written materials in lieu of, or supplemental to, their presentations. DOE will give equal consideration to oral and written comments.

DOE will consider public scoping comments in preparing the Draft PEIS. DOE will issue the Draft PEIS for public review and conduct public hearings. DOE will consider public comments on the Draft PEIS and respond as appropriate in the Final PEIS. No sooner than 30 days following completion of the Final PEIS, DOE will issue a Record of Decision regarding the proposed action.

Issued in Washington, DC, this 15th day of June 2011.

David W. Geiser,

Director, Office of Legacy Management.

[FR Doc. 2011-15408 Filed 6-20-11; 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, July 7, 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 May Minutes.
- Deputy Designated Federal Officer's Comments.
- Federal Coordinator's Comments.
- Liaisons' Comments.
- Visioning Team Update, Ohio University.
- FLUOR B&W Community Commitment Plan Update, Jerry Schneider.
- Administrative Issues:
 - Subcommittee Updates.
- Motions:
 - First Reading of the amendment to the Operating Procedures: Section VI. Board Structure C 3a.
 - Recommendation 11.02—Construction of a multi-purpose facility for DOE and community needs.
 - Recommendation 11.05—Defined Future Use at the Portsmouth Site.
- 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 June 16, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011-15411 Filed 6-20-11; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico; Meeting

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), Northern New Mexico. 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, July 27, 2011 from 1 p.m.–7 p.m.

ADDRESSES: Holiday Inn and Suites, 60 Entrada Drive, Los Alamos, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995-0393; Fax (505) 989-1752 or E-mail: msantistevan@doeal.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

- 1:00 p.m. Call to Order by Co-Deputy Designated Federal Officers, Ed Worth and Lee Bishop
- Establishment of a Quorum: Roll Call and Excused Absences, Lorelei Novak
- Welcome and Introductions, Ralph Phelps
- Approval of Agenda and May 12, 2011 Meeting Minutes
- 1:30 p.m. Public Comment Period
- 1:45 p.m. Old Business

- Written Reports
- Other Items
- 2:00 p.m. New Business
 - Report on Semi-Annual EM SSAB Chairs' Meeting
 - Report from Nominating Committee
 - Discussion of NNM CAB Meeting Locations for 2012
 - Other items
- 2:45 p.m. Items from DOE, Ed Worth and Lee Bishop
 - Update on NNM CAB Office Move
 - Other items
- 3:15 p.m. Break
- 3:30 p.m. Presentation on Long-Term Stewardship
- 4:30 p.m. Discussion of Draft Recommendations to DOE
- 5:00 p.m. Dinner Break
- 6:00 p.m. Public Comment Period
- 6:15 p.m. Consideration and Action on Draft Recommendation(s), Ralph Phelps
- 6:45 p.m. Open Forum for Board Members
- 7:00 p.m. Adjourn, Ed Worth and Lee Bishop

Public Participation: The EM SSAB, Northern New Mexico, 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 Menice Santistevan at least seven days in advance of the meeting at the telephone 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 Menice Santistevan 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 Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: <http://www.nnmcab.org/>.

Issued at Washington, DC on June 14, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011-15412 Filed 6-20-11; 8:45 am]

BILLING CODE 6405-01-P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

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), Oak Ridge Reservation. 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, July 13, 2011 at 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT:

Patricia J. Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM-90, Oak Ridge, TN 37831. Phone (865) 576-4025; Fax (865) 576-2347 or e-mail: halseypj@oro.doe.gov or check the Web site at www.oakridge.doe.gov/em/ssab.

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: The main meeting presentation will be a training overview of the EM SSAB in Oak Ridge, and its role in the DOE-EM program.

Public Participation: The EM SSAB, Oak Ridge, 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 Patricia J. Halsey 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 the agenda item should contact Patricia J. Halsey 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 Patricia J. Halsey at the address and phone number listed above. Minutes will also be available at the following Web site: <http://www.oakridge.doe.gov/em/ssab/minutes.htm>.

Issued at Washington, DC on June 14, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011-15413 Filed 6-20-11; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

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

ACTION: Notice of solicitation of nominations.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C., App. 2, the U.S. Department of Energy is soliciting nominations for candidates to fill vacancies on the Biomass Research and Development Technical Advisory Committee (Technical Advisory Committee).

DATES: The deadline for Technical Advisory Committee member nominations is July 15, 2011.

ADDRESSES: The nominee's name, resume, biography, and any letters of support must be submitted via one of the following methods:

(1) E-mail to

laura.mccann@ee.doe.gov.

(2) Facsimile to 202-586-1640, *Attn:* Laura McCann.

(3) Overnight delivery service to Laura McCann, Designated Federal Officer, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Stop EE-2E, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Laura McCann, Designated Federal Officer, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586-7766; *E-mail:* laura.mccann@ee.doe.gov.

SUPPLEMENTARY INFORMATION: The Biomass Research and Development Act of 2000 (Biomass Act) [Pub. L. 106-224] requires cooperation and coordination

in biomass research and development (R&D) between the U.S. Department of Agriculture (USDA) and U.S. Department of Energy (DOE). The Biomass Act was repealed and replaced in June 2008 by Section 9008 of the Food, Conservation and Energy Act of 2008 (FCEA) [Pub. L. 110-246, 122 Stat. 1651, enacted June 18, 2008, H.R. 6124].

FCEA section 9008(d) establishes the Biomass Research and Development Technical Advisory Committee (Committee) and lays forth its meetings, coordination, duties, terms, and membership types. The Committee must meet quarterly and should not duplicate the efforts of other Federal advisory committees. The Committee advises the DOE and USDA points of contact with respect to the Biomass R&D Initiative (Initiative) and also makes written recommendations to the Biomass R&D Initiative (Initiative) and also makes written recommendations to the Biomass R&D Board (Board). Those recommendations regard whether: (A) Initiative funds are distributed and used consistent with Initiative objectives; (B) solicitations are open and competitive with awards made annually; (C) objectives and evaluation criteria of the solicitations are clear; and (D) the points of contact are funding proposals selected on the basis of merit, as determined by an independent panel of qualified peers.

The Committee members may serve up to two, three-year terms and must include: (A) An individual affiliated with the biofuels industry; (B) an individual affiliated with the biobased industrial and commercial products industry; (C) an individual affiliated with an institution of higher education who has expertise in biofuels and biobased products; (D) 2 prominent engineers or scientists from government or academia that have expertise in biofuels and biobased products; (E) an individual affiliated with a commodity trade association; (F) 2 individuals affiliated with environmental or conservation organizations; (G) an individual associated with State government who has expertise in biofuels and biobased products; (H) an individual with expertise in energy and environmental analysis; (I) an individual with expertise in the economics of biofuels and biobased products; (J) an individual with expertise in agricultural economics; (K) an individual with expertise in plant biology and biomass feedstock development; (L) an individual with expertise in agronomy, crop science, or soil science; and (M) at the option of the points of contact, other members (REF: FCEA 2008 section 9008(d)(2)(A)). All

nominees will be carefully reviewed for their expertise, leadership, and relevance to an expertise. Appointments will be made for three-year terms as dictated by the legislation.

Nominations this year are being accepted only for the following categories in order to address the Committee's needs: (E) An individual affiliated with a commodity trade association; (F) 2 individuals affiliated with environmental or conservation organizations; and (J) an individual with expertise in agricultural economics.

Nominations are solicited from organizations, associations, societies, councils, federations, groups, universities, and companies that represent a wide variety of biomass research and development interests throughout the country. Nominations for one individual who fits several of the categories listed above or for more than one person that fits one category will be accepted. In your nomination letter, please indicate the specific membership category for each nominee. Each nominee must submit their resume and biography along with any letters of support by the deadline above. If you were nominated in previous years, but were not appointed to the committee and would still like to be considered, all individuals must submit their nominations again during this notice and with all required materials. All nominees will be vetted before selection.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations of the Technical Advisory Committee take into account the needs of the diverse groups served by DOE, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. Please note, however, that Federally-registered lobbyists and individuals already serving on another Federal advisory committee are ineligible for nomination.

Appointments to the Biomass Research and Development Technical Advisory Committee will be made by the Secretary of Energy and the Secretary of Agriculture.

Issued at Washington, DC, on June 15, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011-15410 Filed 6-20-11; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Office of Energy Efficiency and Renewable Energy****State Energy Advisory Board (STEAB)**

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

ACTION: Notice of Open Teleconference.

SUMMARY: This notice announces an open teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, July 21, 2011, 3:30 p.m.–4:30 p.m. EST.

The call in number is 877-445-5075 and the passcode is 2402235515.

FOR FURTHER INFORMATION CONTACT: Gil Sperling, STEAB Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Ave, SW., Washington DC, 20585 or telephone: (202) 287-1644.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101-440).

Tentative Agenda: Review and update accomplishments of STEAB's Subcommittee and Task Forces, update Board members on progress made since the live Board meeting on June 7-9, 2011, provide an update to the Board on routine business matters and other topics of interest, and continue planning the upcoming November 2011 Board meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gil Sperling at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site at: <http://www.steab.org>.

Issued at Washington, DC, on June 14, 2011.

LaTanya Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011-15409 Filed 6-20-11; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****Combined Notice of Filings #1**

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10-2068-006; ER10-2077-005.

Applicants: Delaware City Refining Company LLC, PBF Power Marketing LLC.

Description: Delaware City Refining Company LLC, Triennial Market Power Analysis and Notice of Change in Status.

Filed Date: 06/14/2011.

Accession Number: 20110614-5151.

Comment Date: 5 p.m. Eastern Time on Monday, August 15, 2011.

Docket Numbers: ER10-2074-001; ER10-2097-003.

Applicants: Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company.

Description: Notice of Non-Material Change in Status of Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company.

Filed Date: 06/14/2011.

Accession Number: 20110614-5149.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 05, 2011.

Docket Numbers: ER10-3094-001; ER10-3090-001; ER10-3088-001; ER10-3087-001; ER10-3093-001; ER10-3095-001; ER10-3085-001; ER10-3084-001; ER10-3086-001.

Applicants: Fresno Cogeneration Partners, L.P., Wellhead Power eXchange, LLC, Wellhead Power Gates, LLC, Wellhead Power Panoche, LLC, Power Exchange Corporation, Escondido Energy Center, LLC, Chula Vista Energy Center, LLC, El Cajon Energy, LLC, Santa Maria Cogen, Inc.

Description: Notice of Non-Material Change in Status of Power Exchange Corporation, et al.

Filed Date: 06/14/2011.

Accession Number: 20110614-5162.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 05, 2011.

Docket Numbers: ER11-2127-004.

Applicants: Terra-Gen Dixie Valley, LLC

Description: Terra-Gen Dixie Valley, LLC submits tariff filing per 35: OATT Compliance Filing to be effective 5/14/2011.

Filed Date: 06/14/2011.

Accession Number: 20110614-5002.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 05, 2011.

Docket Numbers: ER11-2577-002.

Applicants: Cedar Creek Wind Energy, LLC

Description: Cedar Creek Wind Energy, LLC submits tariff filing per 35: Certificate of Concurrence to be effective 6/14/2011.

Filed Date: 06/14/2011.

Accession Number: 20110614-5119.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 05, 2011.

Docket Numbers: ER11-2819-001.

Applicants: California Independent System Operator Corporation

Description: California Independent System Operator Corporation submits tariff filing per 35: 2011-06-14 CAISO's Meter Penalty Waiver Request Comp to be effective 6/14/2011.

Filed Date: 06/14/2011.

Accession Number: 20110614-5028.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 05, 2011.

Docket Numbers: ER11-3589-001.

Applicants: Long Island Solar Farm, LLC.

Description: Long Island Solar Farm, LLC submits tariff filing per 35.17(b): LISF MBR Amended Filing to be effective 9/12/2011.

Filed Date: 06/14/2011

Accession Number: 20110614-5066.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 05, 2011.

Docket Numbers: ER11-3790-000.

Applicants: The Cleveland Electric Illuminating Company.

Description: Notice of Cancellation of FERC Rate Schedule No. 14 of The Cleveland Electric Illuminating Company with the City of Painesville.

Filed Date: 06/14/2011.

Accession Number: 20110614-5040.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 05, 2011.

Docket Numbers: ER11-3792-000.

Applicants: Wisconsin Power and Light Company.

Description: Wisconsin Power and Light Company submits tariff filing per 35.13(a)(2)(iii): WPL REC Wholesale Power Agreement Amendment to be effective 2/2/2011.

Filed Date: 06/14/2011.

Accession Number: 20110614-5051.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 05, 2011.

Docket Numbers: ER11-3795-000.

Applicants: Interstate Power and Light Company.

Description: Interstate Power and Light Company submits tariff filing per 35.13(a)(2)(iii): IPL & Elk Wind Energy—LBA Agreement to be effective 6/14/2011.

Filed Date: 06/14/2011.

Accession Number: 20110614-5120.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 05, 2011.

Docket Numbers: ER11-3796-000.

Applicants: AEP Texas North Company.

Description: AEP Texas North Company submits tariff filing per 35.13(a)(2)(iii): 20110614 TNC-WKN Mozart GIA to be effective 6/15/2011.

Filed Date: 06/14/2011.

Accession Number: 20110614-5121.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 05, 2011.

Docket Numbers: ER11-3797-000.

Applicants: Public Service Company of Oklahoma.

Description: Public Service Company of Oklahoma submits tariff filing per 35.13(a)(2)(iii): 20110614 PSO-OMPA Duncan Cherokee FA to be effective 6/14/2011.

Filed Date: 06/14/2011.

Accession Number: 20110614-5123

Comment Date: 5 p.m. Eastern Time on Tuesday, July 05, 2011.

Docket Numbers: ER11-3798-000.

Applicants: Nevada Power Company.
Description: Nevada Power Company and El Dorado Energy, LLC Cost Reimbursement Letter Agreement.

Filed Date: 06/14/2011.

Accession Number: 20110614-5161.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 05, 2011.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES11-36-000.

Applicants: The United Illuminating Company.

Description: Response to FERC Staff Informal Request and Renewed Request for Expedited Treatment of The United Illuminating Company.

Filed Date: 06/14/2011.

Accession Number: 20110614-5045.

Comment Date: 5 p.m. Eastern Time on Friday, June 24, 2011.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF81-35-004.

Applicants: Anderson Plant LLC.

Description: Application of Anderson Plant LLC for Certification of Qualifying Facility Status for cogeneration facility.

Filed Date: 06/08/2011.

Accession Number: 20110608-5140.

Comment Date: None Applicable.

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: June 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011-15419 Filed 6-20-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP05-164-017.

Applicants: Equitrans, L.P.

Description: Annual Report on fuel and lost and unaccounted for gas volumes for the period April 2010 through March 2011 of Equitrans, L.P.

Filed Date: 06/03/2011.

Accession Number: 20110603-5330.

Comment Date: 5 p.m. Eastern Time on Monday, June 20, 2011.

Docket Numbers: RP11-2092-001.

Applicants: Big Sandy Pipeline, LLC.

Description: Big Sandy Pipeline, LLC submits tariff filing per 154.203: Baseline Tariff Compliance Filing Docket No. RP11-2092-000 to be effective 6/1/2011.

Filed Date: 06/10/2011.

Accession Number: 20110610-5030.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 22, 2011.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to

file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: June 15, 2011.

Nathaniel J. Davis, Sr.

Deputy Secretary.

[FR Doc. 2011-15423 Filed 6-20-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11-2176-000.

Applicants: Colorado Interstate Gas Company.

Description: Quarterly Lost Unaccounted For and Other Fuel; Gas Reimbursement Percentage of Colorado Interstate Gas Company.

Filed Date: 05/31/2011.

Accession Number: 20110531-5239.

Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2011.

Docket Numbers: RP11-2180-000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Transcontinental Gas Pipe Line Company, LLC. submits tariff filing per 154.203: Update Volume No. 2 Table of Contents (X-70 & X-236) to be effective 5/19/2011.

Filed Date: 06/08/2011.

Accession Number: 20110608-5024.

Comment Date: 5 p.m. Eastern Time on Monday, June 20, 2011.

Docket Numbers: RP11-2181-000.

Applicants: Cimarron River Pipeline, LLC.

Description: Cimarron River Pipeline, LLC submits tariff filing per 154.204: Negotiated Rates 2011-06 to be effective 6/10/2011.

Filed Date: 06/09/2011.

Accession Number: 20110609-5032.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 21, 2011.

Docket Numbers: RP11-2182-000.

Applicants: Kinder Morgan Interstate Gas Transmission LLC.

Description: Kinder Morgan Interstate Gas Transmission LLC submits tariff filing per 154.204: Negotiated Rate 2011-06-09 Concord to be effective 6/10/2011.

Filed Date: 06/09/2011.

Accession Number: 20110609-5040.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 21, 2011.

Docket Numbers: RP11-2183-000.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corporation submits tariff filing per 154.601: Powerex Amendment to be effective 4/11/2011.

Filed Date: 06/09/2011.

Accession Number: 20110609-5094.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 21, 2011.

Docket Numbers: RP11-2184-000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits tariff filing per 154.204: 2011 Clean Up Filing to be effective 7/11/2011.

Filed Date: 06/10/2011.

Accession Number: 20110610-5064.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 22, 2011.

Docket Numbers: RP11-2185-000.

Applicants: CenterPoint Energy Gas Transmission Company, LLC.

Description: CenterPoint Energy Gas Transmission Company, LLC submits tariff filing per 154.204: CEGT LLC—Negotiated Rate—June 2011—Arcadia to be effective 6/10/2011.

Filed Date: 06/10/2011.

Accession Number: 20110610-5077.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 22, 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: June 13, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011-15426 Filed 6-20-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

June 14, 2011.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11-2177-000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits tariff filing per 154.204: Backhaul-Related Language Revisions to be effective 7/7/2011.

Filed Date: 06/06/2011.

Accession Number: 20110606-5038.

Comment Date: 5 p.m. Eastern Time on Monday, June 20, 2011.

Docket Numbers: RP11-2178-000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per

154.204: Open Season Clarification to be effective 7/7/2011.

Filed Date: 06/06/2011.

Accession Number: 20110606–5048.

Comment Date: 5 p.m. Eastern Time on Monday, June 20, 2011.

Docket Numbers: RP11–2179–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits tariff filing per 154.204: Pressure Commitment Update to be effective 7/7/2011.

Filed Date: 06/06/2011.

Accession Number: 20110606–5099.

Comment Date: 5 p.m. Eastern Time on Monday, June 20, 2011.

Docket Numbers: RP11–2186–000.

Applicants: TWP Pipeline LLC.

Description: TWP Pipeline LLC submits tariff filing per 154.203: 2nd Rev Volume No. 1 to be effective 5/24/2011.

Filed Date: 06/13/2011.

Accession Number: 20110613–5061.

Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2011.

Docket Numbers: RP11–2187–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Devon 34691–31 Amendment to Negotiated Rate Agreement Filing to be effective 6/14/2011.

Filed Date: 06/14/2011.

Accession Number: 20110614–5018.

Comment Date: 5 p.m. Eastern Time on Monday, June 27, 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–15425 Filed 6–20–11; 8:45 am]

BILLING CODE

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–2188–000.

Applicants: Columbia Gulf Transmission Company.

Description: Columbia Gulf Transmission Company submits tariff filing per 154.204: ITS–2 Correction to be effective 5/1/2011.

Filed Date: 06/14/2011.

Accession Number: 20110614–5116.

Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2011.

Docket Numbers: RP11–2189–000.

Applicants: Cheyenne Plains Gas Pipeline Company, L.

Description: Cheyenne Plains Gas Pipeline Company, L.L.C. submits tariff filing per 154.204: Tariff Update Filing to be effective 7/15/2011.

Filed Date: 06/14/2011.

Accession Number: 20110614–5122.

Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2011.

Docket Numbers: RP11–2190–000.

Applicants: Questar Pipeline Company.

Description: Questar Pipeline Company submits tariff filing per 154.204: Reserved Capacity to be effective 7/15/2011.

Filed Date: 06/15/2011.

Accession Number: 20110615–5027.

Comment Date: 5 p.m. Eastern Time on Monday, June 27, 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: June 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011-15424 Filed 6-20-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11-2191-000.

Applicants: CenterPoint Energy—Mississippi River Transmission, LLC.

Description: CenterPoint Energy—Mississippi River Transmission, LLC submits tariff filing per 154.204: Non-Conforming ITS TSA between MRT and Trigen to be effective 7/16/2011.

Filed Date: 06/15/2011.

Accession Number: 20110615-5042.

Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2011.

Docket Numbers: RP11-2192-000, RP11-2192-001.

Applicants: Big Sandy Pipeline, LLC.

Description: Big Sandy Pipeline, LLC submits tariff filing per 154.601:

Changes to Big Sandy Negotiated Rate Service Agreements to be effective 6/1/2011.

Filed Date: 06/15/2011.

Accession Number: 20110615-5092.

Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2011.

Docket Numbers: RP11-2193-000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits tariff filing per 154.204: 20110615-1 MUD Non-conforming to be effective 7/16/2011.

Filed Date: 06/15/2011.

Accession Number: 20110615-5093.

Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2011.

Docket Numbers: RP11-2194-000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits tariff filing per 154.204: 20110615-2 Denver City—Golden Spread Non-conforming to be effective 7/16/2011.

Filed Date: 06/15/2011.

Accession Number: 20110615-5119.

Comment Date: 5 p.m. Eastern Time on Monday, June 27, 2011.

Docket Numbers: RP11-2195-000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits tariff filing per

154.204: HEEN Enhancement to be effective 8/1/2011.

Filed Date: 06/16/2011.

Accession Number: 20110616-5028.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 28, 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 5:00 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: June 16, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011-15422 Filed 6-20-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11-2558-001; ER11-2555-001; ER11-2557-001; ER11-2556-001; ER11-2549-001; ER11-2552-001; ER11-2554-001.

Applicants: Niagara Mohawk Power Corporation.

Description: Supplement to Transmittal Letter of Niagara Mohawk Power Corporation, *et al.*

Filed Date: 06/15/2011.

Accession Number: 20110615-5091.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 06, 2011.

Docket Numbers: ER11-3390-002.

Applicants: Interstate Power and Light Company.

Description: Interstate Power and Light Company submits tariff filing per 35.17(b): IPL Changes in Depreciation Rates for Wholesale Production Service Amendment to be effective 6/30/2011.

Filed Date: 06/14/2011.

Accession Number: 20110614-5165.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 05, 2011.

Docket Numbers: ER11-3391-001.

Applicants: Dempsey Ridge Wind Farm, LLC.

Description: Supplement to Market-Based Rate Application of Dempsey Ridge Wind Farm, LLC.

Filed Date: 06/15/2011.

Accession Number: 20110615-5057.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 06, 2011.

Docket Numbers: ER11-3610-002.

Applicants: Public Service Company of Oklahoma.

Description: Public Service Company of Oklahoma submits tariff filing per 35.17(b): 20110614 PSO-OGE Tall Bear FA to be effective 5/2/2011.

Filed Date: 06/15/2011.

Accession Number: 20110615-5071.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 06, 2011.

Docket Numbers: ER11-3800-000.

Applicants: Interstate Power and Light Company.

Description: Interstate Power and Light Company submits tariff filing per 35.13(a)(2)(iii): IPL & Lakefield Wind Project—LBA Agreement to be effective 6/15/2011.

Filed Date: 06/15/2011.

Accession Number: 20110615-5070.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 06, 2011.

Docket Numbers: ER11-3801-000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): WDT SGIA for CSUEB Fuel Cell Project to be effective 6/15/2011.

Filed Date: 06/14/2011.

Accession Number: 20110614-5163.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 05, 2011.

Docket Numbers: ER11-3802-000.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits tariff filing per 35.13(a)(2)(iii): WDT SGIA for CSUEB Fuel Cell Project to be effective 6/15/2011.

Filed Date: 06/14/2011.

Accession Number: 20110614-5164.

Comment Date: 5 p.m. Eastern Time on Tuesday, July 05, 2011.

Docket Numbers: ER11-3804-000.

Applicants: Sempra Energy Trading LLC.

Description: Sempra Energy Trading LLC submits tariff filing per 35.15: SET Cancellation of Reactive Power Tariff to be effective 6/15/2011.

Filed Date: 06/15/2011.

Accession Number: 20110615-5118.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 06, 2011.

Docket Numbers: ER11-3805-000.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc. submits tariff filing per 35.13(a)(2)(iii): Attachment V—Disclosure Amendment to be effective 7/1/2011.

Filed Date: 06/15/2011.

Accession Number: 20110615-5120.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 06, 2011.

Docket Numbers: ER11-3806-000.

Applicants: J.P. Morgan Ventures Energy Corporation.

Description: J.P. Morgan Ventures Energy Corporation submits tariff filing per 35.13(a)(2)(iii): Notice of Succession to be effective 6/1/2011.

Filed Date: 06/15/2011.

Accession Number: 20110615-5121.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 06, 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: June 15, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011-15420 Filed 6-20-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP95-408-078.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits its annual report regarding Columbia's profits resulting from Columbia's sales of base gas.

Filed Date: 04/28/2011.

Accession Number: 20110428-5335.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 14, 2011.

Docket Numbers: RP11-2036-001.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.205(b): Amended Negotiated Rate Filing to be effective 4/26/2011 under RP11-2036 Filing Type: 600.

Filed Date: 05/25/2011.

Accession Number: 20110525-5090.

Comment Date: 5 p.m. Eastern Time on Monday, June 13, 2011.

Docket Numbers: RP11-1429-001.

Applicants: Trans-Union Interstate Pipeline, L.P.

Description: Trans-Union Interstate Pipeline, L.P. submits tariff filing per: Supplement to Order 587-U Compliance Filing to be effective N/A.

Filed Date: 06/08/2011.

Accession Number: 20110608-5094.

Comment Date: 5 p.m. Eastern Time on Monday, June 20, 2011.

Docket Numbers: CP09-54-009.

Applicants: Ruby Pipeline, L.L.C.

Description: Third Petition to Amend the Application of Ruby Pipeline, L.L.C.

Filed Date: 06/07/2011.

Accession Number: 20110607-5140.

Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2011.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: June 9, 2011.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2011-15421 Filed 6-20-11; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2011-0496; FRL-8876-3]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (*i.e.*, a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals.

This document, which covers the period from February 1, 2011 to April 22, 2011, and provides the required notice and status report, consists of the PMNs and TMEs, both pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before July 21, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2011-0496, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

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

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The 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 www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your

comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8951; fax number: (202) 564-8955; e-mail address: mudd.bernice@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to.

Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What should I consider as I prepare my comments for EPA?

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

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

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

II. Why is EPA taking this action?

EPA classifies a chemical substance as either an “existing” chemical or a “new” chemical. Any chemical substance that is not on EPA’s TSCA Inventory is classified as a “new chemical,” while those that are on the TSCA Inventory are classified as an “existing chemical.” For more information about the TSCA Inventory go to: <http://www.epa.gov/opptintr/newchems/pubs/inventory.htm>. Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to

manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for “test marketing” purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: <http://www.epa.gov/opt/newchems>.

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from February 1, 2011 to April 22, 2011, consists of the PMNs and TMEs, both pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA’s review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—149 PMNS RECEIVED FROM FEBRUARY 1, 2011 TO APRIL 22, 2011

Case No.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P-11-0190	02/02/11	05/02/11	CBI	(G) Paper additive	(G) Dialdehyde, reaction products with hydrolyzed n-vinylamide homopolymer hydrohalides.
P-11-0191	02/01/11	05/01/11	CBI	(S) Ultra violet curable polymer for kitchen cabinets and office furniture finishes.	(G) Ultra violet curable polyester polyurethane acrylate.
P-11-0192	02/02/11	05/02/11	CBI	(G) Additive for paper	(G) Amphoteric polyacrylamide.
P-11-0193	02/02/11	05/02/11	CBI	(G) Deposit control additive for fuels	(G) Poly alkyl amido hydrazide.
P-11-0194	02/02/11	05/02/11	CBI	(G) Plasticizer	(S) 1,2,3-propanetricarboxylic acid, 2-(acetyloxy)-, 1,2,3-tris(2-ethylhexyl) ester.
P-11-0195	02/03/11	05/03/11	3M	(S) Prepolymer for sprayable adhesive/sealant; prepolymer for high viscosity adhesive/sealant.	(G) Alkoxysilyl polyether prepolymer.
P-11-0196	02/08/11	05/08/11	Croda Inc.	(G) Hard surface cleaner	(G) Quaternized ethylene oxide propylene oxide polymer.
P-11-0197	02/08/11	05/08/11	CBI	(G) Colourant dispersant	(G) Acrylic polymer.
P-11-0198	02/08/11	05/08/11	CBI	(G) Colourant dispersant	(G) Acrylic polymer.
P-11-0199	02/08/11	05/08/11	CBI	(G) Colourant dispersant	(G) Acrylic polymer.
P-11-0200	02/07/11	05/07/11	CBI	(G) Resin solution additive	(G) Aluminum alkoxide complex, alkoxyated aluminum chelate.

TABLE I—149 PMNS RECEIVED FROM FEBRUARY 1, 2011 TO APRIL 22, 2011—Continued

Case No.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P-11-0201	02/09/11	05/09/11	Lubrigreen	(G) Bio-based lubricant base oil	(S) Fatty acids, C ₈₋₁₈ and C ₁₈ -unsaturated, reaction products with isomerized oleic acid homopolymer.
P-11-0202	02/09/11	05/09/11	Lubrigreen	(G) Bio-based lubricant base oil	(S) Fatty acids, coco, reaction products with isomerized oleic acid homopolymer.
P-11-0203	02/09/11	05/09/11	CBI	(G) Paper treatment	(G) Perfluoroalkylethyl methacrylate copolymer, salt.
P-11-0204	02/11/11	05/11/11	CBI	(S) Brightener for nickel electroplating.	(G) Acetaldehyde, substituted-, reaction products with 2-butyne-1,4-diol.
P-11-0205	02/15/11	05/15/11	CBI	(G) Non-dispersive ink additive	(G) Polyalkene, maleated potassium salts.
P-11-0206	02/15/11	05/15/11	Eastman Kodak Company.	(G) Intermediate	(G) Bisaryl iodonium salt.
P-11-0207	02/15/11	05/15/11	Eastman Kodak Company.	(G) Contained use in an article	(G) Substituted aromatic borate salt.
P-11-0208	02/16/11	05/16/11	Lubrigreen	(G) Lubricant base oil	(S) Fatty acids, C ₈₋₁₈ and C ₁₈ -unsaturated, reaction products with isomerized oleic acid homopolymer 2-ethylhexyl ester.
P-11-0209	02/16/11	05/16/11	Lubrigreen	(G) Lubricant base oil	(S) Fatty acids, coco, reaction products with isomerized oleic acid homopolymer 2-ethylhexyl ester.
P-11-0210	02/16/11	05/16/11	Lubrigreen	(G) Lubricant base oil	(S) Fatty acids, C ₈₋₁₈ and C ₁₈ -unsaturated, reaction products with isomerized oleic acid dimer 2-ethylhexyl ester.
P-11-0211	02/16/11	05/16/11	Lubrigreen	(G) Lubricant base oil	(S) Fatty acids, coco, reaction products with isomerized oleic acid dimer 2-ethylhexyl ester.
P-11-0212	02/16/11	05/16/11	Lubrigreen	(G) Lubricant base oil	(S) 9-octadecenoic acid (9z)-, homopolymer, isomerized.
P-11-0213	02/16/11	05/16/11	Lubrigreen	(G) Lubricant base oil	(S) Fatty acids, C ₈₋₁₈ and C ₁₈ -unsaturated, reaction products with isomerized oleic acid homopolymer.
P-11-0214	02/16/11	05/16/11	Lubrigreen	(G) Lubricant base oil	(S) Fatty acids, coco, reaction products with isomerized oleic acid homopolymer.
P-11-0215	02/16/11	05/16/11	CBI	(G) Base polymer for adhesive	(S) 2-propenoic acid, 2-methyl-, dodecyl ester, telomer with methyl 2-methyl-2-propenoate, tridecyl 2-methyl-2-propenoate, 3-(trimethoxysilyl)-1-propanethiol and 3-(trimethoxysilyl) propyl 2-methyl-2-propenoate.
P-11-0216	02/16/11	05/16/11	CBI	(G) Base polymer for adhesive	(S) 2-propenoic acid, 2-methyl-, dodecyl ester, telomer with butyl 2-propenoate, methyl 2-methyl-2-propenoate, tridecyl 2-methyl-2-propenoate, 3-(trimethoxysilyl)-1-propanethiol and 3-(trimethoxysilyl) propyl 2-methyl-2-propenoate.
P-11-0217	02/17/11	05/17/11	CBI	(G) Additive, open, non-dispersive	(G) Polyetherfluoro urethane.
P-11-0218	02/17/11	05/17/11	CBI	(G) Radiation curing agent	(G) Benzenedioic acid, polymer with alkanediol and carboxyalkoxyalkyl carbamic acid alkoxyalkylester.
P-11-0219	02/18/11	05/18/11	CBI	(G) Paint	(G) Alkyl acrylate, polymer with alkyl acrylate, alkyl methacrylates, and styrene, peroxide-initiated.
P-11-0220	02/18/11	05/18/11	CBI	(G) Paint	(G) Alkyl acrylate, polymer with alkyl acrylate, alkyl methacrylates, and styrene, peroxide-initiated.
P-11-0221	02/18/11	05/18/11	CBI	(G) Paint	(G) Alkyl acrylate, polymer with alkyl acrylate, alkyl methacrylates, and styrene, peroxide-initiated.

TABLE I—149 PMNS RECEIVED FROM FEBRUARY 1, 2011 TO APRIL 22, 2011—Continued

Case No.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P-11-0222	02/18/11	05/18/11	CBI	(G) Paint	(G) Alkyl acrylate, polymer with alkyl acrylate, alkyl methacrylates, and styrene, peroxide-initiated.
P-11-0223	02/18/11	05/18/11	CBI	(G) Use as photoinitiator	(G) Substituted tris-phenyl thiophenyl-sulfonium halogenide.
P-11-0224	02/22/11	05/22/11	CBI	(S) Electrolyte for battery	(G) Fluoro ether.
P-11-0225	02/23/11	05/23/11	CBI	(G) Adhesive component	(S) Amines, C ₃₆ -alkylenedi-, polymers with 6-amino-hexanoic acid, 1,6-diisocyanato-2,2,4-trimethylhexane, 1,6-diisocyanato-2,4,4-trimethylhexane, 5,5'-[(1-methylethylidene)bis(4,1-phenyleneoxy)]bis[1,3-isobenzofurandione] and pyromellitic dianhydride, 2,5-dihydro-2,5-dioxo-1h-pyrrole-1-hexanoic acid-blocked.
P-11-0226	02/23/11	05/23/11	CBI	(G) As a component of adhesives and Cosmetics.	(G) N-(2-hydroxyethyl) alkenamide.
P-11-0227	02/23/11	05/23/11	CBI	(G) Coatings	(G) Urethane acrylate.
P-11-0228	02/22/11	05/22/11	CBI	(S) Used internally as raw material for polyamide manufacture.	(G) Benzaldehyde, reaction products with polyalkylenepolyamines, hydrogenated.
P-11-0229	02/24/11	05/24/11	H.B. Fuller	(G) Industrial adhesive	(G) Polyester, polymer with 1,4-butanediol, dodecanedioic, 1,6-hexanediol, .alpha.-hydro-.omega.-hydroxypoly (oxy-1,4-butanediyl) and isocyanate.
P-11-0230	02/24/11	05/24/11	Goulston technologies, Inc.	(G) Antistatic agent for acrylic yam ...	(G) Alkyl amine salt.
P-11-0231	02/25/11	05/25/11	Cardolite Corporation.	(S) Amine based epoxy curing agent for 2 part epoxy surface coating.	(G) Cashew nutshell liquid amine polymer.
P-11-0232	02/28/11	05/28/11	CBI	(G) Sealant and adhesive	(G) Acryloxy functional siloxane.
P-11-0233	02/25/11	05/25/11	CBI	(S) Curing agent for epoxy resin	(G) Phenol, 4,4'-(1-methylethylidene)bis-, polymer with 2-(chloromethyl)oxirane, reaction products with n3-(3-(dimethylamino)propyl)-n1,n1-dimethyl-alkanepolyamine, compounds with formaldehyde-phenol polymer.
P-11-0234	03/01/11	05/29/11	CBI	(G) Chemical intermediate	(G) Oligmeric phenolic ether.
P-11-0235	03/01/11	05/29/11	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from saturated dimer acid, propoxylated glycerol and acrylic acid.
P-11-0236	03/01/11	05/29/11	CBI	(G) Ink, coating, adhesive	(G) Polyacrylate oligomer product from saturated dimer acid, propoxylated glycerol and acrylic acid.
P-11-0237	03/02/11	05/30/11	Colonial Chemical, Inc.	(S) Oil dispersant	(S) D-glucopyranose, oligomeric, decyl octyl glycosides, polymer with 1,3-dichloro-2-propanol and sorbitan mono-(9z)-9-octadecenoate.
P-11-0238	03/01/11	05/29/11	IGM Resins Inc.	(G) Ultra violet initiator	(S) Poly(oxy-1,2-ethanediyl), .alpha.-[2-(4-benzoylphenoxy)acetyl]-.omega.-[[2-(4-benzoylphenoxy)acetyl]oxy]-.
P-11-0239	03/02/11	05/30/11	CBI	(G) Emulsifier	(G) Butanedioic acid, monopropylisobutylene derivatives, (alkylimino)di-2,1-ethanediyl esters, compounds with akylamino alcohol(1:2).
P-11-0240	03/02/11	05/30/11	CBI	(G) Component of an industrial adhesive.	(G) Modified epoxy resin.
P-11-0241	03/04/11	06/01/11	CBI	(G) Used to adjust (retard) set times in calcium sulfate based binders such as gypsum boards, plaster boards or wall boards.	(S) L-lysine, n2, n6-bis (3-carboxy-1-oxopropyl)-, sodium salt (1:3).

TABLE I—149 PMNS RECEIVED FROM FEBRUARY 1, 2011 TO APRIL 22, 2011—Continued

Case No.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P-11-0242	03/04/11	06/01/11	Materia Inc.	(G) Resin formulation additive	(G) Hydroxy-olefin.
P-11-0243	03/07/11	06/04/11	CBI	(G) Thermoplastic urethane	(G) Aliphatic thermoplastic urethane.
P-11-0244	03/07/11	06/04/11	CBI	(G) Thermoplastic urethane	(G) Aliphatic thermoplastic urethane.
P-11-0245	03/07/11	06/04/11	CBI	(G) Concrete additive	(G) Alkoxyate polymer, mono(alkenyl) ether.
P-11-0246	03/08/11	06/05/11	Oleon Americas Inc.	(S) Emulsifier for commercial (I&I) and household floor cleaners.	(S) D-xylopyranose, oligomeric, C ₁₆₋₁₈ -alkyl glycosides.
P-11-0247	03/04/11	06/01/11	CBI	(G) Treatment for textiles	(G) Perfluoroalkylethyl methacrylate copolymer.
P-11-0248	03/08/11	06/05/11	CBI	(G) Printing additive	(G) Roin, polymer with ethylene glycol, propanediol, alkanedicarboxylic acid, terephthalic acid and trimellitic anhydride.
P-11-0249	03/08/11	06/05/11	CBI	(G) Resin for use in coatings	(G) Acrylic latex.
P-11-0250	03/09/11	06/06/11	Henkel Corporation.	(S) Cure initiator in adhesive formulations.	(S) Benzamide, n-(aminothioxomethyl)-.
P-11-0251	03/10/11	06/07/11	CBI	(G) Printing inks	(G) Cycloaliphatic anhydride polymer with alkyldiol.
P-11-0252	03/10/11	06/07/11	CBI	(G) Photographic chemical	(G) Benzeneacetonitrile, alkoxy-[[alkylsulfonyl]oxy]imino]-.
P-11-0253	03/10/11	06/07/11	Dow Chemical Company.	(G) Detergents and cleaner additive	(G) Acrylic copolymer.
P-11-0254	03/09/11	06/06/11	H.B. Fuller	(G) Industrial adhesive	(G) Alkanedioic acid, polymer with ethenyl acetate, alkyl 2-propenoate, and 2-propenoic acid.
P-11-0255	03/10/11	06/07/11	Colonial Chemical, Inc.	(S) Hard surface cleaner in high caustic solutions.	(S) D-glucopyranose, oligomeric, decyl octyl glycosides, 2,3-dihydroxypropyl ethers, phosphates, sodium salts, polymers with 1,3-dichloro-2-propanol.
P-11-0256	03/10/11	06/07/11	Colonial Chemical, Inc.	(S) Hard surface cleaner in high caustic solutions.	(S) D-glucopyranose, oligomeric, c ₁₀₋₁₆ -alkyl glycosides, 2,3-dihydroxypropyl ethers, phosphates, sodium salts, polymers with 1,3-dichloro-2-propanol.
P-11-0257	03/10/11	06/07/11	Nanotech Industries, Inc.	(S) Flooring; paints; top coating	(S) Carbamic acid, N,N'-(trimethyl-1,6-hexanediy)bis-, ester with 1,2-propanediol (1:2).
P-11-0258	03/10/11	06/07/11	CBI	(G) Curing agent for epoxy resin	(G) Epoxy and isocyanate modified aliphatic polyamine.
P-11-0259	03/04/11	06/01/11	CBI	(G) Flexible packaging adhesive	(G) Polyether polyester polyurethane adhesive.
P-11-0260	03/11/11	06/08/11	CBI	(G) Urethane adhesive	(G) Isocyanate-terminated prepolymer.
P-11-0261	03/16/11	06/13/11	Global Tungsten and Powders Corp.	(S) Luminescent phosphor for use in fluorescent lamp manufacturing.	(S) Aluminum barium europium magnesium oxide.
P-11-0262	03/16/11	06/13/11	Global Tungsten and Powders Corp.	(S) Luminescent phosphor for use in fluorescent lamp manufacture.	(S) Europium strontium borate metaphosphate oxide.
P-11-0263	03/15/11	06/12/11	CBI	(G) Curing agent for epoxy resin	(G) Modified aliphatic polyamine.
P-11-0264	03/17/11	06/14/11	CBI	(G) Flame retardant	(G) Brominated aromatic oligomer.
P-11-0265	03/17/11	06/14/11	CBI	(G) Antistatic additive in polymers, antistatic additive in liquid resins.	(G) Dialkyl imidazolium salt.
P-11-0266	03/17/11	06/14/11	CBI	(G) Industrial lubricant	(G) Polypentaerythritol, mixed esters with straight and branched monoacids.
P-11-0267	03/18/11	06/15/11	Hybrid Plastics, Inc.	(G) Thermoplastics and coatings additive; elastomer additive.	(S) Tricyclo[7.3.3.15,11]heptasiloxane-3,7,14-triol-1,3,5,7,9,11,14-heptakis(2,4,4-trimethylpentyl)-.
P-11-0268	03/21/11	06/18/11	CBI	(G) Flame retardant	(G) Phosphoric acid, diaryl alkyl ester.
P-11-0269	03/21/11	06/18/11	CBI	(G) Optical material component	(G) Perfluorinated cyclo oxaliphatic polymer.
P-11-0270	03/21/11	06/18/11	Lockheed Martin	(S) Piezoelectric ceramics used for active and passive underwater acoustic systems.	(S) Lead strontium titanium zirconium oxide.

TABLE I—149 PMNS RECEIVED FROM FEBRUARY 1, 2011 TO APRIL 22, 2011—Continued

Case No.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P-11-0271	03/21/11	06/18/11	Lockheed Martin	(S) Piezoelectric ceramics used for active and passive underwater acoustic systems..	(S) Calcium cobalt lead titanium tungsten oxide.
P-11-0272	03/21/11	06/18/11	Lockheed Martin	(S) Piezoelectric ceramics used for active and passive underwater acoustic systems.	(S) Calcium cobalt lead strontium titanium tungsten oxide.
P-11-0273	03/21/11	06/18/11	Lockheed Martin	(S) Piezoelectric ceramics used for active and passive underwater acoustic systems.	(S) Lanthanum lead titanium zirconium oxide.
P-11-0274	03/21/11	06/18/11	Lockheed Martin	(S) Piezoelectric ceramics used for active and passive underwater acoustic systems.	(S) Lead niobium titanium zirconium oxide.
P-11-0275	03/23/11	06/20/11	CBI	(G) Coating applications	(G) Hydroxy alkyl alkyl acrylate, polymer with alkyl acrylate, aromatic vinyl monomer, dialkyl acrylate and alkyl alkyl acrylate.
P-11-0276	03/24/11	06/21/11	Mane, USA	(G) Perfumery ingredient	(S) 1,5-cyclododecadiene, 10-methoxy-1,5,9-trimethyl-1,5-cyclododecadiene, 9-methoxy-1,5,10-trimethyl-1,5-cyclododecadiene, 9-methoxy-1,6,10-trimethyl-1,5-cyclododecadiene, 9-methoxy-2,5,10-trimethyl-.
P-11-0277	03/24/11	06/21/11	Zeon Chemicals L.P.	(S) Automotive seals and gaskets	(G) Modified acrylonitrile, butadiene polymer, hydrogenated.
P-11-0278	03/24/11	06/21/11	Cytec Industries Inc.	(G) Coatings resin	(G) Heteromonocycle, polymer with disubstituted carbomonocycle and alkylene glycol, alkyl acrylate blocked.
P-11-0279	03/24/11	06/21/11	CBI	(S) Automotive coatings	(G) Polyester resin.
P-11-0280	03/25/11	06/22/11	Cytec Industries Inc.	(G) Coating resin	(G) Epoxy modified alkyd resin, partially neutralized.
P-11-0281	03/25/11	06/22/11	CBI	(S) Lubricant additive for the purposes of anti corrosion, viscosity control and dispersant improver.	(S) Fatty acids, lanolin, esters with cholesterol-low lanolin alcs.
P-11-0282	03/25/11	06/22/11	CBI	(S) Lubricant additive for the purposes of anti corrosion, viscosity control and dispersant improver.	(S) Fatty acids, C ₁₀₋₃₀ , esters with cholesterol-low lanolin alcs.
P-11-0283	03/25/11	06/22/11	3M Company	(G) Surfactant	(G) Oleate.
P-11-0284	03/25/11	06/22/11	3M Company	(G) Surfactant	(G) Oleyl acrylate.
P-11-0285	03/28/11	06/25/11	CBI	(G) Coating additive	(G) Acid anhydride, polymer with aromatic isocyanate and polyalkyleneglycol, alkanol and diazole alkanamine and lactone homopolymer alkyl ester-blocked.
P-11-0286	03/28/11	06/25/11	CBI	(G) Open, non-dispersive	(G) Blocked polyester polyurethane, neutralized.
P-11-0287	03/28/11	06/25/11	CBI	(G) Open, non-dispersive use	(G) Acrylic silane polymer.
P-11-0288	03/25/11	06/22/11	CBI	(S) Photoinitiator	(G) Biphenyl alkyl morpholino ketone.
P-11-0289	03/28/11	.....	Oleon Americas Inc.	(S) Additive (tracer) for natural fats and oils.	(S) Heptanoic acid, 1,2,3-propanetriyl ester (9ci).
P-11-0290	03/29/11	06/26/11	Scnte LLC	(G) The material will be used as the sensor element in an electrochemical sensor. one carbon nanotube-sic device will be use per one sensor. the maximum estimated annual quantity of sensors will be 10,000. this completed sensor will be able to detect metals and nutrients in water.	(G) Carbon nanotubes.
P-11-0291	03/28/11	06/25/11	CBI	(G) For use as an exterior coating for food containers.	(G) Polyester resin.
P-11-0292	03/29/11	06/26/11	Colonial Chemical, Inc.	(S) Hard surface cleaner in high caustic solutions.	(S) D-glucopyronase, oligomeric, decyl octyl glycosides, 2-hydroxy-3-sulfopropyl ethers, sodium salts, polymers with 1,3-dichloro-2-propanol.

TABLE I—149 PMNS RECEIVED FROM FEBRUARY 1, 2011 TO APRIL 22, 2011—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P-11-0293	03/29/11	06/26/11	Colonial Chemical, Inc.	(S) Hard surface cleaner in high caustic solutions.	(S) D-glucopyronase, oligomeric, C ₁₀₋₁₆ -alkyl glycosides, 2-hydroxy-3-sulfopropyl ethers, sodium salts, polymers with 1,3-dichloro-2-propanol.
P-11-0294	03/30/11	06/27/11	CBI	(G) Open, non-dispersive use (polycarbonate).	(G) Polycarbonate.
P-11-0295	03/30/11	06/27/11	CBI	(G) The PMN substance will be used as a component in detergents, a corrosion inhibitor in multiple applications, and a concrete additive.	(G) Reaction product from the oxidation of D-glucose, neutralized with naoh.
P-11-0296	03/30/11	06/27/11	CBI	(G) The PMN substance will be used as a component in detergents, a corrosion inhibitor in multiple applications, and a concrete additive.	(G) Reaction products from the oxidation of d-glucose, neutralized with sodium hydroxide and potassium hydroxide.
P-11-0297	04/04/11	07/02/11	CBI	(G) Open, non-dispersive use	(G) Azo dyestuff.
P-11-0298	04/04/11	07/02/11	Dow Chemical Company.	(S) Hardener for epoxy thermosetting coatings.	(G) Ethoxylated epoxy amine polymer.
P-11-0299	04/04/11	07/02/11	Dow Chemical Company.	(S) Hardener for epoxy thermosetting coatings.	(G) Polypropylene glycol, epoxy amine polymer.
P-11-0300	04/04/11	07/02/11	CBI	(S) Reactant in the manufacture of polyurethane and polyisocyanurate rigid foams; polyol resin blend with additives for polyurethane b-side reactant.	(G) Aromatic polyester polyol.
P-11-0301	04/04/11	07/02/11	CBI	(S) Reactant in the manufacture of polyurethane and polyisocyanurate rigid foams; polyol resin blend with additives for polyurethane b-side reactant.	(G) Aromatic polyester polyol
P-11-0302	04/04/11	07/02/11	CBI	(S) Reactant in the manufacture of polyurethane and polyisocyanurate rigid foams; polyol resin blend with additives for polyurethane b-side reactant.	(G) Aromatic polyester polyol.
P-11-0303	04/04/11	07/02/11	CBI	(S) Reactant in the manufacture of polyurethane and polyisocyanurate rigid foams; polyol resin blend with additives for polyurethane b-side reactant.	(G) Aromatic polyester polyol.
P-11-0304	04/04/11	07/02/11	CBI	(S) Reactant in the manufacture of polyurethane and polyisocyanurate rigid foams; polyol resin blend with additives for polyurethane b-side reactant.	(G) Aromatic polyester polyol.
P-11-0305	04/04/11	07/02/11	King Industries, Inc.	(G) Resin modifier for thermoplastic polyurethane elastomers.	(G) Polyester diol.
P-11-0306	04/04/11	07/02/11	CBI	(S) Acrylic resin used in ultra violet curable inks and coatings.	(G) Tertiary amine acrylate.
P-11-0307	04/04/11	07/02/11	Cardolite Corporation.	(S) Epoxy curing agent	(G) Cashew nutshell liquid amine polymer.
P-11-0308	04/05/11	07/03/11	Dow Chemical Company.	(G) Dispersant	(G) Acrylic polymer.
P-11-0309	04/06/11	07/04/11	H.B. Fuller Company.	(G) Industrial adhesive	(G) Hexanedioic acid, polymer with polyether polyol, 1,1'-methylenebis[4-isocyanatobenzene] and dihydroxydialkyl ether.
P-11-0310	04/06/11	07/04/11	H.B. Fuller Company.	(G) Industrial adhesive	(G) Hexanedioic acid, polymer with polyether polyol, 1,1'-methylenebis[isocyanatobenzene] and dihydroxydialkyl ether.
P-11-0311	04/06/11	07/04/11	H.B. Fuller Company.	(G) Industrial adhesive	(G) Hexanedioic acid, polymer with A-hydro-W-hydroxypoly [oxy (methyl-1,2-ethanediyl)], 1,1'-methylenebis[4-isocyanatobenzene], dihydroxydialkyl ether and dialkanol ether.

TABLE I—149 PMNS RECEIVED FROM FEBRUARY 1, 2011 TO APRIL 22, 2011—Continued

Case No.	Received date	Projected notice end date	Manufacturer/ importer	Use	Chemical
P-11-0312	04/06/11	07/04/11	H.B. Fuller Company.	(G) Industrial adhesive	(G) Hexanedioic acid, polymer with A-hydro-W-hydroxypoly [oxy (methyl-1,2-ethanediyl)], 1,1'-methylenebis[isocyanatobenzene], dihydroxydialkyl ether and dialkanol ether.
P-11-0313	04/06/11	07/04/11	H.B. Fuller Company.	(G) Industrial adhesive	(G) Hexanedioic acid, polymer with A-hydro-W-hydroxypoly [oxy (methyl-1,2-ethanediyl)], 1,1'-methylenebis[4-isocyanatobenzene], and dihydroxydialkyl ether, reaction products with dialkylcarbinol.
P-11-0314	04/06/11	07/04/11	H.B. Fuller Company.	(G) Industrial adhesive	(G) Hexanedioic acid, polymer with A-hydro-W-hydroxypoly [oxy (methyl-1,2-ethanediyl)], 1,1'-methylenebis[isocyanatobenzene], and dihydroxydialkyl ether, reaction products with dialkylcarbinol.
P-11-0315	04/07/11	07/05/11	K+A North America.	(S) Fertilizer additive	(S) 1H-pyrazole, 3,4-dimethyl-, phosphate(1:1).
P-11-0316	04/07/11	07/05/11	Ascend Performance Materials, LLC.	(G) Industrial solvent, in (closed and open systems. accelerant in permitted industrial explosives.	(S) Cyclohexane, oxidized, by-products from, distillation residues.
P-11-0317	04/08/11	07/06/11	Lubrizol Corporation.	(G) Lubricant additive	(G) Formaldehyde, reaction products with ethylene-maleic anhydride-propene polymer, aryl amine and succinic anhydride monopolyisobutylene derivatives.
P-11-0318	04/11/11	07/09/11	CBI	(G) Additive	(G) Perfluoro multiphenylbenzene.
P-11-0319	04/11/11	07/09/11	CBI	(G) Additive, open, non-dispersive	(G) Polyester polyether urethane block copolymer.
P-11-0320	04/11/11	07/09/11	CBI	(G) Additive, open, non-dispersive	(G) Polyester polyether urethane block copolymer.
P-11-0321	04/11/11	07/09/11	CBI	(G) Additive, open, non-dispersive	(G) Polyester polyether urethane block copolymer.
P-11-0322	04/11/11	07/09/11	CBI	(G) Additive, open, non-dispersive	(G) Siloxanes and silicones, methyl alkyl, polyether modified.
P-11-0323	04/11/11	07/09/11	CBI	(G) Additive, open, non-dispersive	(G) Siloxanes and silicones, methyl alkyl, polyether modified.
P-11-0324	04/11/11	07/09/11	CBI	(G) Additive, open, non-dispersive	(G) Siloxanes and silicones, methyl alkyl, polyester modified.
P-11-0325	04/13/11	07/11/11	CBI	(G) Battery component manufacturing.	(G) Beta alumina powder.
P-11-0326	04/13/11	07/11/11	CBI	(G) Cleaning additive for cpu manufacturing.	(G) Glycerylether.
P-11-0327	04/14/11	.....	Kior	(G) Distillation feedstock after hydrotreatment.	(S) Distillates (lignocellulosic), C ₅₋₄₀ .
P-11-0328	04/14/11	.....	Kior	(G) Feedstock	(S) Paraffin waxes (lignocellulosic), hydrotreated, C ₅₋₄₀ -branched, cyclic and linear.
P-11-0329	04/14/11	.....	Kior	(S) Hydrotreated lignocellulosic naphtha will be used as blendstock for conventional fossil fuels.	(S) Naphtha (lignocellulosic), hydrotreated, C ₅₋₁₂ -branched, cyclic and linear.
P-11-0330	04/14/11	.....	Kior	(S) Hydrotreated lignocellulosic kerosene will be used as blendstock for conventional fossil fuels.	(S) Kerosine (lignocellulosic), hydrotreated, C ₈₋₁₆ -branched, cyclic and linear.
P-11-0331	04/14/11	.....	Kior	(S) Hydrotreated lignocellulosic distillate will be used as blendstock for conventional fossil fuels.	(S) Distillates (lignocellulosic), hydrotreated, C ₈₋₂₆ -branched, cyclic, and linear.
P-11-0332	04/14/11	.....	Kior	(S) Intended for use in a manner comparable to gas oil as it is currently used in industry.	(S) Residual oils (lignocellulosic), hydrotreated, C ₂₀₋₄₀ -branched, cyclic and linear.
P-11-0333	04/14/11	.....	CBI	(G) Component of industrial coating	(G) Phosphated polyester.
P-11-0334	04/15/11	.....	CBI	(G) An open non-dispersive use in ink.	(G) Aliphatic and alicyclic alcohol type polyester.
P-11-0335	04/15/11	.....	CBI	(G) Cross-linker	(G) Methyl, phenyl, amino-functional siloxanes and silsesquioxane.
P-11-0337	04/19/11	.....	CBI	(S) Ingredient in fragrance compound	(S) 4,7-decadienal.

TABLE I—149 PMNS RECEIVED FROM FEBRUARY 1, 2011 TO APRIL 22, 2011—Continued

Case No.	Received date	Projected notice end date	Manufacturer/importer	Use	Chemical
P-11-0338	04/21/11	.....	CBI	(S) Photoinitiator	(G) Biphenyl alkyl morpholino ketone.
P-11-0339	04/22/11	07/20/11	Southwest Nanotechnologies Inc.	(S) Additives for resins, thermoplastics, and elastomers for mechanical reinforcement and enhanced electrical properties; coatings on metallic foils for battery applications; manufacture of fabric composites using mwnt.	(S) Multi-wall carbon nanotube also know as—mwnt (multi-wall carbon nanotube), smwcnt (specialty multi-wall carbon nanotube), and smwxxx and where xxx represents our identifier for a new generation of the same products.
P-11-0340	04/22/11	07/20/11	CBI	(G) Reactant	(G) Formaldehyde polymer with reaction products of alkylated phenol and polyalkyltriamine.

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received by EPA

during this period: The EPA case number assigned to the TME, the date the TME was received by EPA, the projected end date for EPA's review of

the TME, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the TME, and the chemical identity.

TABLE II—2 TMEs RECEIVED FROM FEBRUARY 1, 2011 TO APRIL 22, 2011

Case No.	Received date	Projected review end date	Manufacturer/importer	Use	Chemical
T-11-0007	03/24/11	05/07/11	Cytec Industries Inc	(G) Coating resin	(G) Heteromonocycle, polymer with substituted carbomonocycle and alkylene glycol, alkyl acrylate blocked.
T-11-0008	03/25/11	05/08/11	Cytec Industries Inc	(G) Coating resin	(G) Epoxy modified alkyd resin, partially neutralized.

In Table III. of this unit, EPA provides the following information (to the extent that such information is not claimed as

CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date

the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE III—122 NOCs RECEIVED FROM FEBRUARY 1, 2011 TO APRIL 22, 2011

Case No.	Received date	Commencement notice end date	Chemical
P-00-0141	02/03/11	01/23/11	(S) L-aspartic acid, N,N'-1,2-ethanediybis-, magnesium salt.
P-00-0142	02/03/11	01/23/11	(S) L-aspartic acid, N,N'-1,2-ethanediybis-, magnesium sodium salt.
P-00-0145	02/03/11	01/23/11	(S) L-aspartic acid, N,N'-1,2-ethanediybis-, magnesium sodium salt (1:1:1).
P-01-0932	03/08/11	03/04/11	(G) Aliphatic epoxide.
P-02-0249	04/04/11	03/23/11	(S) Fatty acids, C ₁₆₋₁₈ and C ₁₈ -unsatd., me esters, epoxidized.
P-04-0479	04/19/11	04/04/11	(G) Mixture containing alcohols, aminoalcohols and their sodium salts.
P-04-0575	04/01/11	02/23/11	(G) Alkoxyated dihalogenated aromatic heterocycle.
P-04-0670	04/01/11	03/15/11	(G) Poly(alkoxy aromatic heterocycle).
P-05-0267	02/14/11	01/31/11	(G) Polydimethyl fluoroalkyl hydrogen siloxane.
P-06-0255	04/06/11	03/14/11	(S) Fatty acids, C ₁₈ -unsatd., dimers, hydrogenated, polymers with 1,4-cyclohexanedicarboxylic acid, polyethylene-polypropylene glycol bis(2-aminopropyl) ether, polypropylene glycol diamine and propionic acid.
P-06-0394	03/31/11	03/03/11	(G) Epoxy acrylate oligomer.
P-06-0702	02/01/11	01/28/11	(G) Substituted aliphatic amine.
P-07-0010	04/04/11	03/25/11	(G) Styrene-maleic anhydride copolymer, reaction products with polyether, salt with alkanolamin.
P-07-0090	03/31/11	03/03/11	(G) Aliphatic urethane acrylate oligomer.
P-07-0257	02/15/11	02/07/11	(G) Aqueous, aliphatic polyether polyurethane dispersion polymer.
P-07-0407	02/10/11	01/29/11	(G) Fatty acid polymer with aliphatic diol and aromatic diacid.
P-07-0601	02/17/11	01/27/11	(G) Hydrofluoroolefin.
P-08-0080	03/14/11	11/18/10	(G) Amine salt of polyester polyol, cycloaliphatic glycol, hydroxy substituted carboxylic acid, alkyldiamine and aliphatic diisocyanate.
P-08-0524	03/31/11	03/03/11	(G) Unsaturated polyester.
P-08-0545	03/11/11	03/02/11	(G) Surface-active, blocked isocyanate polymer.
P-08-0558	03/31/11	03/03/11	(G) Polyurethane acrylate.

TABLE III—122 NOCs RECEIVED FROM FEBRUARY 1, 2011 TO APRIL 22, 2011—Continued

Case No.	Received date	Commencement notice end date	Chemical
P-08-0664	02/14/11	02/04/11	(G) Fluorinated acrylic copolymer.
P-09-0029	03/31/11	03/03/11	(G) Polyester acrylate.
P-09-0162	03/08/11	02/24/11	(G) Styrenic polymers.
P-09-0175	03/04/11	02/27/11	(G) Aqueous polyurethane resin dispersion.
P-09-0209	03/01/11	02/14/11	(S) Poly(oxy-1,2-ethanediyl), .alpha.-undecyl-.omega.-hydroxy-, branched and linear, ethers with 1,2-decanediol (1:1).
P-09-0258	03/31/11	03/03/11	(G) Bis-phenoxyethanol fluorene diacrylate.
P-09-0359	03/31/11	03/03/11	(G) Methylene bis-(4-cyclohexylisocyanate), oligomeric reaction products with polyester polyol and hydroxyethyl acrylate and 2,2-bis(hydroxymethyl) propionic acid, compound with amine.
P-09-0360	03/31/11	03/03/11	(G) Methylene bis-(4-cyclohexylisocyanate), oligomeric reaction products with polyester polyol and hydroxyethyl acrylate and 2,2-bis(hydroxymethyl) propionic acid.
P-09-0391	02/01/11	01/10/11	(G) Polyamide epichlorohydrin resin salt (PMN substances A-F).
P-09-0403	03/31/11	03/03/11	(G) Alkyd resin.
P-09-0505	02/18/11	02/16/11	(G) Aliphatic urethane acrylate.
P-09-0533	03/08/11	02/28/11	(S) Siloxanes and silicones, me hydrogen, me 3-(2-oxiranylmethoxy)propyl, ethoxy- and methoxy-terminated.
P-09-0568	03/22/11	03/14/11	(G) Formaldehyde, polymer with 2-(chloromethyl)oxirane, polyoxyalkane, and phenols.
P-10-0079	04/19/11	04/14/11	(G) Substituted naphthalene mixed salt.
P-10-0179	04/19/11	04/13/11	(G) Polymer of tall oil fatty acid, aliphatic diols, aliphatic polyols, and aromatic acids.
P-10-0232	02/22/11	02/09/11	(G) Polycarboxylic acid/polysulfonate derivative.
P-10-0269	03/01/11	02/07/11	(G) Polymer of aromatic dicarboxylic acid and alkane diamine.
P-10-0282	01/31/11	01/12/11	(G) Maleated nylon graft copolymer.
P-10-0326	02/22/11	01/26/11	(S) Propane, 1,1,1,2,3,3-hexafluoro-.
P-10-0327	03/04/11	02/08/11	(S) 1-propene, 1,2,3,3,3-pentafluoro-.
P-10-0338	02/22/11	02/10/11	(G) Acrylate copolymer.
P-10-0339	02/22/11	01/31/11	(G) Acrylate copolymer.
P-10-0342	04/07/11	03/07/11	(G) Poly 2-ethylhexyl methacrylate.
P-10-0343	02/09/11	01/15/11	(G) Substituted cyclomethacrylate.
P-10-0358	02/18/11	02/14/11	(G) Polycyclic polyamine diester organometallic compound.
P-10-0374	02/08/11	02/01/11	(G) Modified polyalkylene polyamine reacted with bisphenol a diglycidyl ether 1 and modified epoxy resin.
P-10-0399	02/24/11	02/21/11	(G) Styrene-maleinate copolymer.
P-10-0406	03/10/11	03/08/11	(G) Alkene acrylate copolymer.
P-10-0423	02/01/11	01/24/11	(S) Benzenesulfonic acid 3,3'-[(9,10-dihydro-5,8-dihydroxy-9,10-dioxo-1,4-anthracenediyl)dimino]bis[6-butyl-], disodium salt.
P-10-0435	04/07/11	03/24/11	(G) Substituted anthraquinone derivative.
P-10-0454	02/22/11	01/26/11	(S) 1,3-divinyl imidazolidin-2-one.
P-10-0455	02/15/11	02/10/11	(G) Hexahalosubstituted alkane.
P-10-0456	03/28/11	03/14/11	(G) Alkenes, polymer with anhydride esters.
P-10-0457	02/15/11	01/26/11	(G) Pentahalosubstituted alkane.
P-10-0460	03/18/11	03/02/11	(G) Fatty acids, reaction product with adipic and trifunctional alcohol.
P-10-0489	02/15/11	02/14/11	(G) Pentahalosubstituted alkene.
P-10-0496	03/21/11	02/27/11	(G) Poly acrylate.
P-10-0501	02/09/11	01/17/11	(G) Substituted pyridone.
P-10-0517	02/17/11	02/15/11	(S) Oxirane, 2-ethyl-, polymer with oxirane, mono-C ₁₂₋₁₄ -sec-alkyl ethers.
P-10-0536	04/01/11	03/26/11	(G) Styrene-maleic anhydride copolymer, reaction product with amino compounds.
P-10-0546	02/15/11	01/15/11	(G) Modified lithium iron phosphate.
P-10-0547	03/30/11	01/29/11	(G) Vegetable oil, modified products.
P-10-0548	03/30/11	02/15/11	(G) Vegetable oil, modified products.
P-10-0549	03/30/11	02/14/11	(G) Vegetable oil, modified products.
P-10-0557	04/01/11	03/26/11	(G) Aromatic polyester.
P-10-0562	03/23/11	03/16/11	(G) Alkyl methacrylates, polymer with alkyl acrylates, styrene, hydroxyalkyl methacrylates, epoxypropyl acrylates and polyalkene glycol hydrogen sulfate, alkyloxyalkyl alkenyloxy alkyl, ammonium salt.
P-10-0570	04/01/11	03/26/11	(G) Polyester.
P-10-0576	04/19/11	04/09/11	(G) Alkyloxypropyliminodipropionic acid, monosodium salt.
P-10-0577	03/18/11	02/24/11	(G) Polyamideimide.
P-10-0578	03/23/11	03/16/11	(G) Alkylenealkanedioic acid, polymer with alkenylbenzene and alkenenitrile, ammonium salt, alkylhydroperoxide-initiated.
P-10-0580	03/11/11	02/28/11	(G) Heteromonocyclic[3,4-b]thiophene, homopolymer, 2-[1-[difluoro[(1,2,2-trifluoroethyl)oxy]methyl]-1,2,2-tetrafluoroethoxy]-1,1,2,2-tetrafluoroethoxy]-1,1,2,2-tetrafluoroethanesulfonic acid-tetrafluoroethylene polymer-doped.
P-10-0582	03/08/11	02/03/11	(G) Isocyanate terminated urethane polymer.
P-10-0583	03/08/11	02/24/11	(G) Isocyanate terminated urethane polymer.
P-10-0584	03/08/11	02/02/11	(G) Isocyanate terminated urethane polymer.
P-10-0585	03/08/11	02/17/11	(G) Isocyanate terminated urethane polymer.
P-10-0586	01/31/11	01/05/11	(G) Isocyanate terminated urethane polymer.
P-10-0587	01/31/11	01/06/11	(G) Isocyanate terminated urethane polymer.
P-10-0589	02/22/11	01/31/11	(G) Dibasic acid ester.

TABLE III—122 NOCs RECEIVED FROM FEBRUARY 1, 2011 TO APRIL 22, 2011—Continued

Case No.	Received date	Commencement notice end date	Chemical
P-10-0593	02/04/11	01/10/11	(G) Modified starch.
P-11-0001	02/17/11	02/09/11	(G) Aromatic polyisocyanate, aliphatic polyol blocked.
P-11-0010	02/04/11	01/05/11	(G) Fatty acid modified polyester aliphatic polyurethane dispersion.
P-11-0011	02/09/11	02/04/11	(G) Polyol blocked cycloaliphatic amine polymer.
P-11-0013	02/11/11	02/09/11	(G) Alkyl dioic acid, polymer with substituted alkanooate, alkyl diisocyanate, alkyldiol, and substituted alkanooic acid.
P-11-0017	03/07/11	02/18/11	(G) Aromatic diacid, polymer with polyol, alkyl triol, alkyl alkanooate.
P-11-0019	04/07/11	03/28/11	(G) Mercapto silane ester of silica.
P-11-0023	04/07/11	03/29/11	(S) Boron, trifluoro(tetrahydrofuran)-, (t-4)-, polymer with 3-methyl-3-[(2,2,2-trifluoroethoxy)methyl]oxetane, ether with 2,2-dimethyl-1,3-propanediol (2:1).
P-11-0024	04/11/11	03/18/11	(S) Boron, trifluoro(tetrahydrofuran)-, (t-4)-, polymer with 3-methyl-3-[(2,2,3,3,3-pentafluoropropoxy)methyl]oxetane, ether with 2,2-dimethyl-1,3-propanediol (2:1).
P-11-0029	03/28/11	03/25/11	(S) Cyclopentene, 1,3,3,4,4,5,5-heptafluoro-
P-11-0030	02/23/11	02/11/11	(G) Waterborne polyurethane.
P-11-0041	02/22/11	02/11/11	(S) Oxirane, 2-ethyl-, polymer with 2-methyloxirane, monododecyl ether.
P-11-0051	04/05/11	03/09/11	(G) Amino methacrylate copolymer.
P-11-0054	03/23/11	02/28/11	(S) 2H-pyran-4-ol, 2-(1-ethylpropyl) tetrahydro-4-methyl.
P-11-0056	03/31/11	03/03/11	(G) Aliphatic urethane acrylate polymer.
P-11-0057	03/31/11	03/03/11	(G) Aliphatic urethane acrylate polymer.
P-11-0061	03/04/11	02/23/11	(G) Reaction product of substituted naphthalenesulfonic acid diazotized and couple with substituted triazine and substituted naphthalenesulfonic acid alkyl amino phenyl compound.
P-11-0062	04/19/11	04/07/11	(G) Carbomonocyclic alkene polymer with alkyl alkenoate, alkyl alkenoate, alkyl alkenoate, alkyl alkenoate, polyalkylidene alkenoate and dialkylaminoalkyl alkenamide.
P-11-0065	02/24/11	02/16/11	(G) Alkyl methacrylate.
P-11-0068	03/28/11	03/09/11	(G) Polyester polyamide.
P-11-0070	03/10/11	03/09/11	(S) Siloxanes and silicones, me hydrogen, me vinyl.
P-11-0071	03/10/11	02/23/11	(S) Siloxanes and silicones, di-ph, me hydrogen, me vinyl.
P-11-0073	02/15/11	02/10/11	(G) Alkylxylene.
P-11-0083	04/01/11	03/28/11	(G) Reaction product of substituted naphthalenesulfonic acid and substituted benzenesulfonic acid diazotized and coupled with alkyl benzene substituted triazine amino phenyl compound.
P-11-0094	04/05/11	03/13/11	(G) 2-naphthalenecarboxylic acid, substituted diazenyl calcium salt.
P-11-0095	03/23/11	03/21/11	(S) Tricyclo[7.3.3.15,11]heptasiloxane-3,7,14-triol, 1,3,5,7,9,11,14-heptaphenyl.
P-11-0096	03/22/11	03/15/11	(S) 1,4-benzenedicarboxylic acid, 1,4-dimethyl ester, polymer with 1,4-cyclohexanedimethanol and 2,2,4,4-tetramethyl-1,3-cyclobutanediol, manufacture of, by-products from, reaction products with ethylene glycol, polymers with 1,4-cyclohexanedimethanol, diethylene glycol, ethylene glycol, maleic anhydride and phthalic anhydride, 3a,4,5,6,7,7a-hexahydro-4,7-methano-1h-inden-5(or 6)-yl esters.
P-11-0099	04/01/11	03/24/11	(G) Condensation sodium/potassium salt reaction product of substituted naphthalene sulfonic acid azo substituted phenyl amino substituted triazine and alkylsulfonyl benzenesulfonic acid azo substituted phenylamino substituted triazine.
P-11-0110	04/19/11	03/25/11	(G) Tertiary ammonium compound.
P-11-0112	04/20/11	04/13/11	(G) Modified epoxy resin.
P-11-0113	04/12/11	03/28/11	(G) Heteromonocyclo, 4-methyl-, oxide, methanesulfonate salt.
P-11-0115	03/28/11	03/17/11	(G) Mdi modified polyester resin.
P-11-0126	04/16/11	04/13/11	(S) 1,3-benzenedicarboxylic acid, polymers with by-products from manuf. of 1,4-cyclohexanedimethanol-di-me terephthalate-2,2,4,4-tetramethyl-1,3-cyclobutanediol polymer-ethylene glycol reaction products, 1,4-cyclohexanedimethanol, diethylene glycol, ethylene glycol, maleic anhydride and triethylene glycol.
P-11-0127	04/12/11	03/16/11	(G) Epoxidized fatty acids, unsaturated, me esters, polymers with trimethylolpropane.
P-11-0134	04/19/11	04/08/11	(G) Carbomonocyclic alkene polymer with alkyl alkenoate, alkyl alkenoate, alkyl alkenoate, alkyl alkenoate, polyalkylidene alkenoate and heteromonocyclic alkene.
P-11-0143	04/08/11	04/04/11	(G) Acrylic polymer.
P-11-0155	03/21/11	03/18/11	(G) Polymer substituted anthraquinone derivative.
P-98-0317	04/08/11	03/01/11	(G) Substituted cyclic olefin.
P-11-0127	04/12/11	03/16/11	(G) Epoxidized fatty acids, unsaturated, me esters, polymers with trimethylolpropane.
P-11-0134	04/19/11	04/08/11	(G) Carbomonocyclic alkene polymer with alkyl alkenoate, alkyl alkenoate, alkyl alkenoate, alkyl alkenoate, polyalkylidene alkenoate and heteromonocyclic alkene.
P-11-0143	04/08/11	04/04/11	(G) Acrylic polymer.
P-11-0155	03/21/11	03/18/11	(G) Polymer substituted anthraquinone derivative.
P-98-0317	04/08/11	03/01/11	(G) Substituted cyclic olefin.

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II.

to access additional non-CBI information that may be available.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer,

Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: June 8, 2011.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2011-15246 Filed 6-17-11; 11:15 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9321-9]

Science Advisory Board Staff Office Notification of a Public Meeting of the Clean Air Scientific Advisory Committee (CASAC) Lead Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the CASAC Lead Review Panel to conduct a peer review of EPA's *Integrated Science Assessment for Lead (First External Review Draft)* and a consultation on EPA's *Review of the National Ambient Air Quality Standards for Lead: Risk and Exposure Assessment Planning Document*.

DATES: The CASAC Lead Review Panel meeting will be held on Wednesday, July 20, 2011, from 9 a.m. to 5:30 p.m. (Eastern Time) and on Thursday, July 21, 2011, from 8:30 a.m. to 12:30 p.m. (Eastern Time).

ADDRESSES: The public meeting will be held at the Marriott at Research Triangle Park hotel, 4700 Guardian Drive, Durham, North Carolina 27703 (919) 941-6200.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning the public meeting may contact Mr. Aaron Yeow, Designated Federal Officer (DFO), via telephone at (202) 564-2050 or e-mail at yeow.aaron@epa.gov. General information concerning the EPA CASAC can be found on the EPA Web site at <http://www.epa.gov/casac>.

SUPPLEMENTARY INFORMATION: The CASAC was established pursuant to the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409D(d)(2), to provide advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and the strategies to attain and maintain air

quality standards and to prevent significant deterioration of air quality.

The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the CASAC Lead Review Panel will hold a public meeting to peer review EPA's *Integrated Science Assessment for Lead (First External Review Draft)*. The Panel will also provide consultative advice on EPA's *Review of the National Ambient Air Quality Standards for Lead: Risk and Exposure Assessment Planning Document*. These are being prepared as part of the review of the National Ambient Air Quality Standards for Lead. The CASAC Lead Review Panel and the CASAC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Section 109(d)(1) of the CAA requires that the Agency periodically review and revise, as appropriate, the air quality criteria and the NAAQS for the six "criteria" air pollutants, including lead. EPA is currently reviewing the primary (health-based) and secondary (welfare-based) NAAQS for lead. The CASAC Lead Review Panel previously provided consultative advice on EPA's *Integrated Review Plan for the National Ambient Air Quality Standards for Lead (External Review Draft)* in a teleconference on May 5, 2011 (76 FR 21346-21347) as reported in a letter to the EPA Administrator, dated May 25, 2011 (EPA-CASAC-11-007).

The Integrated Science Assessment (ISA) provides a concise review, synthesis and evaluation of the most policy-relevant science, including key science judgments that are important to the design and scope of exposure and risk assessments, as well as other aspects of the NAAQS review. The risk/exposure assessment planning document considers the extent to which information and conclusions presented in the ISA provide support for the development of quantitative assessments of risk and exposure for health and/or welfare effects.

Availability of Meeting Materials: Agendas and materials in support of the meeting will be placed on the CASAC Web site at <http://www.epa.gov/casac> in advance of the meeting. For technical questions and information concerning EPA's *Integrated Science Assessment for Lead (First External Review Draft)*, please contact Dr. Ellen Kirrane of EPA's Office of Research and Development at (919) 541-1340, or kirrane.ellen@epa.gov. For technical questions and information concerning EPA's *Review of the National Ambient*

Air Quality Standards for Lead: Risk and Exposure Assessment Planning Document, please contact Dr. Deirdre Murphy of EPA's Office of Air and Radiation at (919) 541-0729, or murphy.deirdre@epa.gov.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a federal advisory committee to consider as it develops advice for EPA. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC panels to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the Designated Federal Officer directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes. Interested parties should contact Mr. Aaron Yeow, DFO, in writing (preferably via e-mail) at the contact information noted above by July 13, 2011, to be placed on the list of public speakers for the meeting.

Written Statements: Written statements should be supplied to the DFO via e-mail at the contact information noted above by July 13, 2011 for the meeting so that the information may be made available to the Panel members for their consideration. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Aaron Yeow at (202) 564–2050 or yeow.aaron@epa.gov. To request accommodation of a disability, please contact Mr. Yeow preferably at least ten days prior to the teleconference to give EPA as much time as possible to process your request.

Dated: June 14, 2011.

Anthony F. Maciorowski,
Deputy Director, EPA Science Advisory Staff
Office.

[FR Doc. 2011–15414 Filed 6–20–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9321–1]

Recent Posting to the Applicability Determination Index (ADI) Database System of Agency Applicability Determinations, Alternative Monitoring Decisions, and Regulatory Interpretations Pertaining to Standards Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS); the National Emission Standards for Hazardous Air Pollutants (NESHAP); and the Stratospheric Ozone Protection Program.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each complete document posted on the Applicability Determination Index (ADI) database system is available on the Internet through the Office of Enforcement and Compliance Assurance (OECA) Web site at: <http://www.epa.gov/compliance/monitoring/programs/caa/adi.html>. The document may be located by control number, date, author, subpart, or subject search. For questions about the ADI or this notice, contact Maria Malave at EPA

by phone at: (202) 564–7027, or by e-mail at: malave.maria@epa.gov. For technical questions about the individual applicability determinations or monitoring decisions, refer to the contact person identified in the individual documents, or in the absence of a contact person, refer to the author of the document.

SUPPLEMENTARY INFORMATION:

Background

The General Provisions to the NSPS in 40 Code of Federal Regulations (CFR) Part 60 and the General Provisions to the NESHAP in 40 CFR part 61 provide that a source owner or operator may request a determination of whether certain intended actions constitute the commencement of construction, reconstruction, or modification. EPA’s written responses to these inquiries are commonly referred to as applicability determinations. See 40 CFR 60.5 and 61.06. Although the part 63 NESHAP [which includes Maximum Achievable Control Technology (MACT) standards] and section 111(d) of the Clean Air Act (CAA) regulations contain no specific regulatory provision that sources may request applicability determinations, EPA responds to written inquiries regarding applicability for the part 63 and section 111(d) programs as well. The NSPS and NESHAP also allow sources to seek permission to use monitoring or recordkeeping that are different from the promulgated requirements. See 40 CFR 60.13(i), 61.14(g), 63.8(b)(1), 63.8(f), and 63.10(f). EPA’s written responses to these inquiries are commonly referred to as alternative monitoring decisions. Furthermore, EPA responds to written inquiries about the broad range of NSPS and NESHAP regulatory requirements as they pertain to a whole source category. These inquiries may pertain, for example, to the type of sources to which the regulation applies, or to the testing, monitoring, recordkeeping, or reporting requirements contained in the regulation. EPA’s written responses to these inquiries are commonly referred to as regulatory interpretations.

EPA currently compiles EPA-issued NSPS and NESHAP applicability

determinations, alternative monitoring decisions, and regulatory interpretations, and posts them on the ADI on a quarterly basis. In addition, the ADI contains EPA-issued responses to requests pursuant to the stratospheric ozone regulations, contained in 40 CFR part 82. The ADI is an electronic index on the Internet with over one thousand EPA letters and memoranda pertaining to the applicability, monitoring, recordkeeping, and reporting requirements of the NSPS, NESHAP, and stratospheric ozone regulations. The letters and memoranda may be searched by date, office of issuance, subpart, citation, control number, or by string word searches.

Today’s notice comprises a summary of 47 such documents added to the ADI on May 25, 2011. The subject and header of each letter and memorandum are listed in this notice, as well as a brief abstract of the letter or memorandum. Complete copies of these documents may be obtained from the ADI through the OECA Web site at: <http://www.epa.gov/compliance/monitoring/programs/caa/adi.html>

Summary of Headers and Abstracts

The following table identifies the database control number for each document posted on the ADI database system on May 25, 2011; the applicable category; the subpart(s) of 40 CFR part 60, 61, or 63 (as applicable) covered by the document; and the title of the document, which provides a brief description of the subject matter. We have also included an abstract of each document identified with its control number after the table. These abstracts are provided solely to alert the public to possible items of interest and are not intended as substitutes for the full text of the documents. This notice does not change the status of any document with respect to whether it is “of nationwide scope or effect” for purposes of section 307(b)(1) of the Clean Air Act. For example, this notice does not make an applicability determination for a particular source into a nationwide rule. Neither does it purport to make any document that was previously non-binding into a binding document.

ADI DETERMINATIONS UPLOADED ON APRIL X, 2011

Control number	Categories	Subparts	Title
M090044	MACT	A, RRR	Alternate Operating Scenarios for Production Furnace
1000001	NSPS	VVV	Installation of a Pigment Mixing and Milling Process
1000002	MACT, NSPS.	AAAA, WWW.	Gas Treatment System Used for Energy Recovery Purposes
1000003	NSPS	WWW	Monitoring Lids of Gas Well Sumps as ‘Surface’ of the Landfill
M100001	MACT	EEEE	Once In Always In Policy
M100002	MACT	MMMM	Use of Non-Regenerative Carbon Adsorption System

ADI DETERMINATIONS UPLOADED ON APRIL X, 2011—Continued

Control number	Categories	Subparts	Title
M100004	MACT	NNNNN	Alternative Control Device Operating Parameters
M100005	MACT	FFFF, JJJ	Solid State Polymerization PET Process
M100006	MACT	EEE	Excess Emissions Reporting for a Waste Liquid Fuel-Fired Boiler
1000004	NSPS	A, Db	Boiler Modification
1000007	NSPS	Y	Alternative Monitoring
1000008	NSPS	WWW	Landfill Gas Treatment System
M100009	MACT	M	Secondary Carbon Adsorption Requirements for Resold Equipment
1000009	NSPS	WWW	Landfill Gas Operating Temperatures
M100010	MACT	EEE	Minimum Secondary Combustion Chamber Temperature Operating Parameter Limit
1000011	NSPS	CCCC	Thermal Destruction Unit Determination
M100012	MACT	JJ	Relocation of Facility and Reduction of Emissions after NESHAP Compliance Date
1000012	NSPS	Dc, IIII	Alternative Method for Fuel Supplier Certification
1000013	NSPS	G, H	Use of Method 7E at Nitric Acid Plants and Method 6C at Sulfuric Acid Plants
1000015	NSPS	KKKK	Commence Construction for Gas Turbine
1000016	NSPS	GG, KKKK	Commence Construction for Gas Turbine
1000017	NSPS	A, AAa	Installation of a Capacitor Bank and Tuned Reactor
1000019	NSPS	AAAA	Conversion of Post-Sorted Municipal Solid Waste Feedstock
M100014	MACT	R	Alternative Monitoring Plan
M100015	MACT	EEE	Alternative Monitoring Plan
M100016	MACT	EEE	Modification of Alternative Monitoring Plan
M100017	MACT	EEE	Modification of Alternative Monitoring Plan
M100018	MACT	GGG	Alternative Monitoring of Hydrochloric Acid (HCl) Bubbler Control Device
1000021	NSPS	Kb	External Floating Roof Tank Enclosed with Fixed Roof
1000022	NSPS	WWW	Amended Design Capacity Reports
A100001	Asbestos	M	Removal of Asbestos Containing Coating Materials from Stator Bars
M100019	MACT	EEEEEE	Cold Core Machines Used for Capture and Wet Acid Scrubbers
1000023	NSPS	KKKK	Installation of Combustion Turbines and Direct-Fired Heaters
1000024	NSPS	Ja	Mining of Naturally Occurring Oil Sands and Extraction of Bitumen
M100020	MACT	EEE	Alternative Monitoring Plan
M100021	MACT	RRR	Alternative Monitoring Plan
M100022	MACT	EEE	Comprehensive Performance Test Plan
1000025	NSPS	A, NNN, RRR	Alternative Monitoring Plan
M100023	MACT	PPPPP	Appropriate Method for Calculating Reconstruction
M100024	MACT	RRR	Startup, Shutdown, Malfunction Reporting Requirements
1000026	NSPS	Kb	Alternative Monitoring Plan
Z100001	NESHAP	FF	Sour Water Streams Regulation
M100025	MACT	EEE	Alternative Operating Parameters
M100026	MACT	EEE	Modification of Alternative Monitoring Plan
M100027	MACT	EEE	Alternative Monitoring Plan
M100028	MACT	EEE	Modification of Alternative Monitoring Plan
A110001	NESHAP	M	Asbestos NESHAP: Municipalities demolishing and renovating multiple residential structures as part of an "urban renewal" project.

Abstracts*Abstract for [M090044]*

Q1: Does 40 CFR part 63, subpart RRR, allow Kaiser Aluminum Fabricated Products, Inc., the owner/operator of a secondary aluminum production furnace, to switch back and forth between group 1 and group 2 furnace operation at a regular or even infrequent basis, depending on what its being fed to the furnace at any given time, and turn the control device on and off depending on the operating scenario?

A1: No. MACT subpart RRR does not allow for the furnace to be designated group 1 and 2 at the same time, depending on what it's being feed to the furnace. However, the owner/operator may choose to re-designate a furnace on

a very infrequent basis along with a permit modification.

Q2: Does 40 CFR part 63, subpart RRR, allow an owner/operator to operate the furnace as a group 1 furnace, accepting an undefined mix of clean and purchased scrap and a fluxing agent, with the baghouse not operating?

A2: No. A group 1 furnace cannot be authorized to operate under more than one set of operating parameters depending on what is being fed to the furnace at any given time and the use of a control device or not. MACT subpart RRR addresses a single worst-case scenario when conducting a performance test to establish operating parameters, and does not address alternate operating scenarios.

Abstract for [1000001]

Q1: Are two mixing vessels and two milling machines being installed at the Majilite facility in Dracut, Massachusetts, considered coating mix preparation equipment under 40 CFR part 60, subpart VVV?

A1: Because Majilite's mixing vessels will be blending solvent with other materials to prepare pigments that are used to prepare polymeric coatings, the pigment mixing vessels are coating mix preparation equipment subject to NSPS subpart VVV. The milling machines, however, do not fit within the rule definition of coating mix preparation equipment.

Q2: Majilite operates one coating line subject to NSPS, subpart VVV, and that this coating line and coating mix

operation use more than 130 Mg of VOC per year. What are the requirements under 40 CFR part 60, subpart VVV, for the coating mix preparation equipment if the pigment mixing vessels are being installed without concurrent construction of a control device?

A2: EPA has determined that because Majilite's subpart VVV coating operation and associated coating mix preparation equipment use at least 130 Mg of VOC per 12-month period and the pigment mixing vessels are being installed without concurrent construction of a control device, Majilite must meet the requirements of 60.742(c)(2) for its pigment mixing vessels, among other requirements.

Abstract for [1000002]

Q: Do the processes which occur in the preliminary treatment system at Waste Management of New Hampshire's (WMNH) Turnkey Recycling and Environmental Enterprise (TREE) facility in Rochester, New Hampshire, meet the requirements for a "treatment system" under 40 CFR 60.752(b)(2)(iii)(C)?

A: Yes. EPA has determined that the preliminary treatment system located at WMNH in which the gas has been compressed, dewatered, and filtered down to 10 microns meets the criteria of a treatment system under 40 CFR 60.752(b)(2)(iii)(C), and is not subject to the monitoring and recordkeeping requirements of 40 CFR 60.756(b) and 40 CFR 60.758(b) and (c).

Abstract for [1000003]

Q: Does EPA approve the request of Allied Imperial Landfill in Imperial, Pennsylvania to monitor some landfill gas well sump structure lids as though they were the "surface" of the landfill, in accordance with 40 CFR part 60, subpart WWW?

A: Yes. EPA finds that monitoring the sump lids is adequate to fulfill the requirements of NSPS subpart WWWW based on the intent of NSPS subpart WWW and the sump structure construction. Monitoring inside the sump structure could create an artificially elevated value for the landfill gas well(s). If a landfill gas extraction well (LGFW) monitoring event indicates readings above 500 ppm around the circumference of the fiberglass structure, and/or lid of the structure, then corrective actions must be completed, as required by NSPS subpart WWW.

Abstract for [M100001]

Q: The Pactiv facility located in Winchester, Virginia, must comply with 40 CFR part 63, subpart EEEE, the

organic liquid distribution (OLD) MACT, due to a hazardous air pollutant (HAP) in a foaming agent used at the facility. Were the facility to switch the foaming agent to one that uses less than 5 percent HAPS would the OLD MACT apply?

A: Yes. The new foaming agent still contains HAPs, and according to the "Once in Always In" Policy, the OLD MACT still applies.

Abstract for [M100002]

Q: Does EPA approve the use of a non-regenerative carbon adsorption system as the control technology under 40 CFR part 63, subpart MMMM, for the metal parts coating operations of East Penn Manufacturing in Lyon Station, Pennsylvania?

A: Yes. EPA approves this request based on the conditions set forth in this letter, and provided that the request does not relieve East Penn of any other requirements of MACT subpart MMMM.

Abstract for [M100004]

Q: Does EPA approve alternative operating parameters under 40 CFR part 63, subpart NNNNN, for the Irgafos V-47 caustic scrubber at the Ciba Corporation facility in McIntosh, Alabama?

A: No. EPA cannot approve the requested alternatives without evaluating the performance test data that is collected using these proposed alternative parameters which needs to be submitted by Ciba Corporation to demonstrate compliance with the applicable emission limit set out in Table 1 of MACT subpart NNNNN.

Abstract for [M100005]

Q: Is the polyethylene terephthalate (PET) solid state polymerization (SSP) process at the DAK Americas facility in Cooper River, South Carolina, subject to 40 CFR part 63, subpart FFFF?

A: Yes. The SSP process is a miscellaneous organic chemical manufacturing process unit (MCPU) which manufactures a product, PET, which is described by the North American Industry Classification System 325. In doing so, it generates a hazardous air pollutant (HAP), acetaldehyde. The MCPU is located at a major source of HAP. Thus, the SSP process satisfies all of the conditions for applicability under MACT subpart FFFF, specifically 40 CFR 63.2435 (a) and (b)(1) through (3).

Abstract for [M100006]

Q: Does EPA waive excess emissions reporting requirements under 40 CFR part 63, subpart EEE, for a waste liquid fuel-fired boiler system (WFBS) at the

Diversified Scientific Services facility in Kingston, Tennessee, if the unit is equipped with an automatic fuel cutoff?

A: No. EPA does not waive the excess emissions reporting requirements of MACT subpart EEE even when the WFBS has safe guards that minimizes emissions because there remain numerous reportable situations involving continuous monitoring system devices, such as opacity monitors, thermocouples, pressure transducers, and flow meters, that could malfunction and that should be included in the required report.

Abstract for [1000004]

Q1: Is the exemption in section 60.14(e)(4) of the General Provisions applicable to Power Boiler No. 6, at Rayonier Performance Fibers, in Fernandina Beach, Florida, even though the emission rate of nitrogen oxide (NO_x) will increase, such that it will cause the boiler to not become subject to NSPS subpart Db, Standards of Performance for Industrial-Commercial-Institutional Steam Generating?

A1: Yes. Even though there will be an increase in the NO_x emission rate, the operational or physical changes made at the facility are not considered modifications under 40 CFR 60.14(e) of the General Provisions. Thus, the changes did not subject the Power Boiler No. 6 to NSPS subpart Db.

Q2: An interpretation of the reference in 40 CFR 60.14(e)(4) to the "facility's construction specifications" is requested for Power Boiler No. 6. The boiler was purchased by Rayonier as a traveling grate boiler and was later converted to a bubbling fluidized bed boiler.

A2: The exemption in 40 CFR 60.14(e)(4) relates to the construction specifications prior to the date a standard becomes applicable to a source category. Because the applicability date for 40 CFR part 60, subpart Db, is June 18, 1984, 40 CFR 60.14(e)(4) relates to the construction specifications for Power Boiler No. 6 prior to that date.

Abstract for [1000007]

Q: Does EPA grant the request of Detroit Edison's River Rouge Power Plant in River Rouge, Michigan, to eliminate the requirement for temperature monitors on the gas stream exits of the thermal dryers?

A: No. Continuous temperature monitoring, as required in 40 CFR 60.256(a) (1), indicates compliance status with respect to the carbon monoxide (CO) limits. The temperature record ensures the source temperature correlates with the results of performance tests or other emissions

tests. Monitoring temperature is essential because improperly tuned operations at off-design levels decrease combustion efficiency resulting in increased CO emissions. Additionally, Detroit Edison has not requested an alternative form of monitoring (see 60 CFR 60.13(i)), but rather the elimination of the monitoring requirements. EPA is unable to grant this request because the Region does not have authority to amend NSPS subpart Y.

Abstract for [1000008]

Q: Does the landfill gas treatment system proposed by the City of Midland, Michigan, meet the requirements that allow the landfill gas to be exempt from control requirements per 40 CFR 60.752(b)(2)(iii)(C) when burned in internal combustion engines? A: Yes. Because the proposed landfill gas treatment system will use 10-micron filtration and sufficient dewatering, it meets the current requirements used by EPA for gas "treatment" and is therefore exempt from the requirements of 40 CFR 60.752(b)(2)(iii)(C).

Abstract for [M100009]

Q: Is dry cleaning equipment that was initially installed prior to December 21, 2005, but was removed from its original location, sold to a new owner, and relocated subsequent to December 21, 2005, subject to the area source, non-residential carbon adsorption requirements at 40 CFR 63.322(o)(2)?

A: Yes. Reselling and relocating dry cleaning equipment constitutes installation of a dry cleaning system. Therefore dry cleaning equipment that is resold and relocated would be subject to the secondary carbon adsorption requirements of 40 CFR 63.322(o)(2).

Abstract for [1000009]

Q: Does EPA approve higher landfill gas temperatures under 40 CFR 60.753(c) for specific extraction and leachate wells at Veolia's Glacier Ridge Landfill near Horicon, Wisconsin?

A: Yes. Because the proposed operating limit of 148 degrees Fahrenheit is properly supported by data that shows there would be a minimal risk of a landfill fire or significantly inhibited anaerobic decomposition, EPA approves the higher landfill gas temperatures under 40 CFR 60.753(c).

Abstract for [M100010]

Q: Does EPA approve a request to waive the minimum secondary combustion chamber temperature operating parameter limit under 40 CFR part 63, subpart EEE, for the Heritage-

WTI (WTI) facility in East Liverpool, Ohio?

A: No. EPA concludes that the rotary kiln and the secondary combustion chamber (SCC) are separate combustion chambers and thus does not approve the request under MACT subpart EEE. WTI cannot legitimately argue that the SCC at its facility does not contain a steady-state, or near steady-state, process wherein fuel, hazardous waste, and oxidizer (*i.e.*, pure oxygen or ambient air) feed rates are controlled, since the SCC is engineered to allow WTI to feed pure oxygen or ambient air into the SCC to improve combustion. EPA concludes that the SCC is an area in which controlled flame combustion of hazardous waste occurs. Therefore, EPA disapproves WTI's request in its original and revised comprehensive performance test plans to determine that the Rotary Kiln and the SCC are one combustion chamber and to eliminate the need for a minimum combustion chamber temperature operating parameter limit.

Abstract for [1000011]

Q: Does 40 CFR part 60, subpart CCCC, apply to the thermal destruction unit operated by PIKA International in Calhoun County, Arkansas?

A: Yes. NSPS subpart CCCC applies because the waste that is burned (1) is a RCRA solid waste, but not a RCRA hazardous waste; (2) meets the definition of a commercial solid waste; and (3) is not eligible for any exemptions under NSPS subpart CCCC. In addition, NSPS subpart CCCC applies as a result of the date construction began on the incinerator.

Abstract for [M100012]

Q: If Riceland Cabinet's (Riceland) facility in Orville, Ohio, which is subject to 40 CFR part 63, subpart JJ, relocates its facility and reduces its emission to area source status thresholds after the NESHAP compliance date, does it remain subject to the MACT subpart JJ and Title V Permitting requirements?

A: Yes. The relocated facility would be considered an existing source under MACT subpart JJ. The relocated facility would also be required to obtain a Title V Permit. The "Once In Always In" Policy (OIAI Policy) allows new sources the option to comply with federally enforceable limits after the compliance date in order to not be subject to the NESHAP. However, a relocated facility cannot be defined as a new source for the purposes of the NESHAP. To be considered a new source, a source would have to be constructed after the compliance date; however, relocating a facility is not construction according to

NESHAP definition of construction. Construction is defined as the on-site fabrication, erection, or installation of an affected source. Construction does not include the removal of all equipment comprising an affected source from an existing location and reinstallation of such equipment at a new location. Any source that is not a new source is defined as an existing source.

Abstract for [1000012]

Q: Does EPA approve the use of alternative method ASTM D975-07b for fuel certification under 40 CFR part 60, subpart Dc, in lieu of ASTM D396 for Quest Diagnostics in Chantilly, Virginia?

A: Yes. ASTM D975-07b is more stringent than ASTM D396 in all cases except viscosity, which will not affect sulfur dioxide emissions, and thus is acceptable under NSPS subpart Dc.

Abstract for [1000013]

Q1: Is Method 7E an allowable alternative test method for measuring nitrogen oxide (NOx) emissions at nitric acid plants for the purposes of determining compliance with 40 CFR part 60, subpart G?

A1: No. Method 7E is not approved for use to demonstrate compliance with NSPS subpart G.

Q2: Is Method 6C an allowable alternative test method for measuring sulfur dioxide (SO2) emissions at sulfuric acid plants for the purposes of determining compliance with 40 CFR part 60, subpart H?

A2: No. Method 6C is not approved for use to demonstrate compliance with NSPS subpart H.

Abstract for [1000015]

Q: Will EPA reconsider its February 8, 2006 determination that 40 CFR part 60, subpart KKKK, applies to a turbine at Great River Energy in Cambridge, Minnesota?

A: No. The request does not provide any new information that would cause the Agency to reconsider the February 8, 2006 determination that NSPS subpart KKKK applies.

Abstract for [1000016]

Q: Did construction commence on the proposed installation of a gas turbine at Great River Energy (GRE) in Cambridge, Minnesota, before the applicability date of 40 CFR part 60, subpart KKKK?

A: No. GRE did not begin installation of the turbine nor enter into a contractual obligation to undertake and complete within a reasonable time a continuous program of construction for the installation of the turbine prior to

the applicability date of 40 CFR part 60, subpart KKKK.

Abstract for [1000017]

Q1: Is the installation of a capacitor bank and tuned reactor at the electrical substation servicing an electric arc furnace (EAF) at the Alton Steel, Inc. facility, a physical or operational change to an existing EAF under 40 CFR 60.14 of the General Provisions?

A1: Yes. The capacitor/reactor project increased the capacity (*i.e.*, the production rate) of the existing EAF and is therefore an operational change to the EAF under 40 CFR 60.14, which resulted in a kilogram per hour increase in the emission rate of particulate matter.

Q2: Is the capacitor/reactor project exempt from the definition of "modification" because it is "routine maintenance, repair, or replacement" under 40 CFR 60.14(e)(1)?

A2: No. The capacitor/reactor project was not routine maintenance, repair, or replacement under 40 CFR 60.14(e)(1).

Q3: Is the capacitor/reactor project not subject to 40 CFR part 60, subpart AAa because it is not considered "modification" based on the capital expenditure exemption at 40 CFR 60.14(e)(2)?

A3: Yes. The capacitor/reactor project allowed the EAF to increase the rate of production but involved no capital expenditure on the "existing facility" (*i.e.*, the EAF as it is defined at 40 CFR 60.271(a)). All of the monetary expenditure associated with the project involved replacing components and adding new components to the electrical substation that supplies power to the EAF. Because the capital expenditure exemption at 40 CFR 60.14(e)(2) applies, the capacitor/reactor project has not triggered the applicability of NSPS subpart AAa.

Abstract for [1000019]

Q1: Does 40 CFR part 60, subpart AAAA, apply to the syngas gasification process at Fulcrum BioEnergy's (Fulcrum) proposed facility in McCarran, Nevada?

A1: No. Because Fulcrum's proposed syngas gasification process is neither combustion nor pyrolysis, the syngas generation unit is not considered a "pyrolysis/combustion unit" or "municipal waste combustion unit" as defined in NSPS subpart AAAA.

Q2: Does 40 CFR part 60, subpart AAAA, apply to the combined cycle combustion turbine if the facility meets the requirements for the small power production facility exemption or the cogeneration facility exemption?

A2: No. 40 CFR 60.1020(b) and (c) list the requirements that a facility must meet to be exempt from NSPS subpart AAAA as a small power production facility or cogeneration facility. Those requirements include meeting criteria established by the Federal Power Act, combusting homogeneous waste, and providing notification and documentation to EPA. EPA concurs with Fulcrum's assessment that the gasified waste would be considered homogeneous. However, to qualify for either of the facility exemptions Fulcrum would also need to provide appropriate notification and documentation that it meets the criteria established by the Federal Power Act.

Q3: Does 40 CFR part 60, subpart AAAA, apply to the air pollution control flare?

A3: No. As long as the flare is operated solely as an air pollution control device, it is excluded from the definition of "municipal waste combustion unit" under NSPS subpart AAAA.

Abstract for [M100014]

Q: Does EPA approve NuStar Logistics ("NuStar") request for alternative monitoring of emissions under 40 CFR part 63, subpart R, of continuous presence of a pilot flame for the vapor combustion unit (VCU) in lieu of temperature monitoring at the firebox at its bulk gasoline terminal in Colorado Springs, Colorado?

A: EPA does not approved NuStar alternative monitoring request because it does not demonstrate meeting the requirements of 40 CFR 63.8(f)(4), 63.427(a)(5), and 63.428(c)(3). Additional information needs to be provided within 30 calendars days after receipt of this letter. [Additional information was not provided.]

Abstract for [M100015]

Q: Does EPA approve the request of the Tooele Chemical Agent Disposal Facility (TOCDF) in Stockton, Utah, to waive the requirement to establish, and subsequently monitor, at the Deactivation Furnace System (DFS), a 12-hour rolling average (HRA) feed rate for mercury, ash, semi- and low-volatile metals, and chlorine required by 40 CFR 63.1290(l), (m), (n), and (o), respectively?

A: EPA conditionally approves TOCDF's request to waive the requirement to establish, and subsequently monitor, at the DFS, a 12-HRA feed rate for mercury, ash, semi- and low-volatile metals, and chlorine required by 40 CFR 63.1290(l), (m), (n), and (o), respectively. EPA's approval is limited to when burster and fuze pairs

from 4.2" HD mortars, HT mortars, and minimal amounts of process generated waste such as agent contaminated rags and small metal parts are fed to the DFS. Additionally, EPA's approval is based on a feed rate to the DFS of combined 4.2" mortar burster/fuze pairs of 274/ hour, as well as the RCRA Permit limits for process generated waste, and TOCDF's commitment to monitor and comply with those limits.

Abstract for [M100016]

Q: Does EPA approve the request of the Tooele Chemical Agent Disposal Facility (TOCDF) located in Stockton, Utah, under 40 CFR part 63, subpart EEE, to modify the first condition of the approved alternative monitoring request (AMR) of April 27, 2006, to also include munitions processing? The first condition states that "this approval shall apply only to the Baseline Processing phase of the TOCDF Mustard campaign which restricts processing to only those ton containers (TCs) in which the level of Hg in the liquid phase is less than 1 ppm"?

A: Yes. EPA approves modifying the scope of the AMP request to include the processing of the above TCs, munitions, and secondary waste. Based on the information provided, EPA believes that TOCDF can process the additional TCs, munitions, and secondary waste and maintain compliance with 40 CFR part 63, subpart EEE standards.

Abstract for [M100017]

Q: Does EPA approve under 40 CFR part 63, subpart EEE, the request of the Tooele Chemical Agent Disposal Facility (TOCDF) in Stockton, Utah, to modify Condition #2 of the alternative monitoring request approved by EPA on June 29, 2009? The condition states among other things, that during the Non-Baseline Processing Phase, the sampling period for the Appendix K System sorbent tube trap sets shall be no greater than 12 hours, and Tooele requests to change "no greater than 12 hours" to "no greater than 12 hours (plus or minus 30 minutes to allow for unforeseen events)"?

A: EPA approves the revision to Condition #2 because TOCDF has confirmed that even though the start or stop time may vary by up to 30 minutes, TOCDF will sample continuously. For those periods where the start or stop time varies by 15 minutes or more, TOCDF will provide a reason code in its reporting to explain why sampling was plus or minus 15 minutes or more. In addition, EPA believes the change in Condition #2 is approvable for the reasons expressed in its June 29, 2009 letter.

Abstract for [M100018]

Q1: Does EPA approve Albemarle Corporation's (Albemarle) alternative monitoring request for its facility in Orangeburg, South Carolina, to measure the liquid temperature in the receiver of its process condensers as described in 40 CFR 63.2460(c)(2)(v) when conducting the process condenser demonstration required by 40 CFR 63.1257(d)(3)(iii)(B)?

A1: Yes. EPA agrees that measuring the liquid temperature of the condensed liquid in the receiver would be an acceptable alternative to measuring the exhaust gas temperature as required by 40 CFR 63.1257(d)(3)(iii)(B) because the temperature of the condensed liquid and the exhaust gas are in equilibrium.

Q2: Does EPA approve Albemarle's alternative recordkeeping request under 40 CFR part 63, subpart GGG, to maintain records of standard and non-standard batch production to allow the calculation of rolling annual emissions on a daily basis to comply with the daily rolling 365-day HAP emissions once per month as required by 40 CFR 63.1259(b)(4)?

A2: Yes. For purposes of compliance with the annual mass limits of 40 CFR 63.1254(a)(2) and (b)(2), Albemarle must calculate and record the daily rolling annual total emissions for the previous month by the fifth day of each month.

Q3: Does EPA approve Albemarle's request for a waiver of the performance test requirements of 40 CFR 63.11(b)(6)(i) for a flare used to control Hydrogen Cyanide (HCN) emissions from the HCN Pharmaceutical Manufacturing Process Unit (PMPU)?

A3: Yes. EPA approves a waiver of the requirement to conduct a performance test to demonstrate compliance with 40 CFR 63.11(b)(6)(i). This waiver is for the same flare being operated under the same conditions for which Albemarle submitted information in 2002 and 2003 to support its request for a waiver of the performance test requirements under 40 CFR 60.18(c)(3)(i). In addition, the regulatory language of 40 CFR 63.11(b)(6)(i) is identical to that of 40 CFR 60.18(c)(3)(i).

Q4: Does EPA approve Albemarle's setting alternate operating limits for a hydrochloric acid (HCl) bubbler control device to those required by 40 CFR 63.1258(b)(1)(ii) for scrubbers?

A4: EPA conditionally approves the alternate operating parameters pending a successful performance test and other conditions listed in the EPA response letter.

Abstract for [1000021]

Q: Do the requirements for external floating roof tanks (EFR) in 40 CFR

60.112b(a)(2), the requirements for internal floating roof (IFR) tanks in 40 CFR 112b(a)(1) apply, or both, apply to EFR tanks which have been enclosed with a fixed roof located at the TransMontaigne Operating Company LP facility in Selma, North Carolina?

A: An EFR tank which is enclosed by the installation of a fixed roof meets the 40 CFR part 60, subpart Kb description of an IFR tank and is therefore subject to the requirements for IFR tanks. An enclosed EFR tank is no longer subject to the NSPS subpart Kb requirements for EFR tanks.

Abstract for [1000022]

Q1: Is a municipal solid waste landfill that already has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters required under 40 CFR part 60, subpart WWW, to submit an amended design capacity report upon approval of a further expansion?

A1: No. The facility is not required to do so as it is subject to the standards 40 CFR 60.752(b), which does not require such reports.

Q2: Is a municipal solid waste landfill that already has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters required under 40 CFR part 60, subpart WWW, to submit a notice for a physical or operation change pursuant to 40 CFR 60.7(a)(4) upon approval of a further expansion?

A2: Yes. Under NSPS subpart WWW, the facility is required to do so for all modifications that meet the definition of 40 CFR 60.14.

Abstract for [A100001]

Q1: Does the removal of asbestos containing coating materials from stator bars at a metal recycling facility in Ashtabula, Ohio, constitute an asbestos conversion process subject to 40 CFR 61.155?

A1: No. 40 CFR 61.155 applies to situations where regulated asbestos containing material, and asbestos-containing waste material, is converted to a non-asbestos material. The information provided by the requestor indicates that stator bars coated with an asbestos containing resin and wrapped with tape covered by an asbestos containing tar will be removed from various locations and the bars will be taken to a recycling operation where the asbestos containing resin and tar will be removed from the bars. All of the asbestos that is removed from the stator bars will remain asbestos after it is removed from the bars. The asbestos material that is removed will be disposed of in a landfill. Because the

asbestos containing material is not subject to any process or treatment that would convert it to a nonasbestos material, there is no conversion to a non asbestos material taking place.

Q2: Are the notification requirements at 40 CFR 61.145 applicable to the removal of asbestos covered and coated stator bars at the site where they are removed and at the site where the asbestos is stripped from the bars?

A2: At each site where the stator bars are removed, if the surface area (of the bars to be removed) covered with asbestos containing resin and tar equals or exceeds 160 square feet, then the notification requirements of 40 CFR 61.145 apply and a notice must be submitted to the Federal, State or local agency delegated to receive such notifications. Because the stator bars will be stripped of asbestos at a site in Ashtabula, Ohio, a copy of each notification for bars removed outside of Ohio should also be sent to the Ohio Environmental Protection Agency. No matter where the bars are removed, a notification must be in place for each batch of stator bars stripped of asbestos containing materials at the site in Ashtabula, Ohio.

Q3: Which sections of 40 CFR 61.145(c) apply at the site where the stator bars are removed?

A3: Because the stator bars are not going to be stripped of asbestos at the site where they are removed, and because the stator bars are going to be shipped to Ashtabula, Ohio, the bars must be handled in accordance with the requirements of 40 CFR 61.145(c)(5)(i) through (iii).

Abstract for [M100019]

Q: With respect to the operating limits for cold core machines utilizing capture and wet acid scrubbers to control triethylamine (TEA) emissions at the Indianapolis Casting facility in Indianapolis, Indiana: When dampers are manually set in a fixed position, does the exemption from the continuous parameter monitoring system ("CPMS") requirement apply only to exempting a CPMS with regard to damper position or would a fixed damper position exempt the cold core machine capture system from monitoring the hourly average rate as with respect to 40 CFR 63.7740(a)?

A: 40 CFR 63.7710(b)(2)(i) contains two different requirements (at a minimum) for the capture system: level of ventilation draft and damper position settings. Both types of CPMS are required, but the CPMS for damper system is not needed if the damper position is manually set and in a fixed position. Thus, the CPMS exemption referred to in 40 CFR 63.7740(a)(2)

applies solely to the installation of a CPMS for damper position.

Abstract for [1000023]

Q: Does EPA approve a request for alternate performance testing under 40 CFR part 60, subpart KKKK, for combustion turbines and direct-fired heaters being installed as part of a process modification at the PL Propylene facility in Houston, Texas?

A: Yes. EPA has determined that the stationary combustion turbines are subject to the requirements of NSPS subpart KKKK, and has approved the request to conduct one performance test downstream of the selective catalytic reduction units, and to apply reference method results from the NOx continuous monitoring system certification for the initial demonstration of compliance with 40 CFR 60.4320. However, testing must be conducted using the fuel or combination of fuels that would result in the highest emissions.

Abstract for [1000024]

Q: Is the proposed Earth Energy oil sand mine and processing facility in eastern Utah, which will include mining of the naturally occurring oil sands and extraction of the bitumen from these sands, subject to 40 CFR part 60, subpart Ja?

A: No. The Earth Energy facility would not be considered a "petroleum refinery" and thus is not subject to NSPS subpart Ja.

Abstract for [M100020]

Q1: Does EPA approve the Tooele Army Depot's (TEAD's) request to establish a limit on the minimum baghouse inlet temperature to replace the requirement to establish a limit on the maximum baghouse temperature (40 CFR 63.1209(k)(1)(i)) to assure compliance with the dioxin and furan limit in 40 CFR 63.1219(a)(1)?

A1: EPA conditionally approves the use of a minimum baghouse inlet temperature rather than a maximum baghouse inlet temperature during the Comprehensive Performance Test if the baghouse inlet temperature is maintained at the required level, as established in the EPA response letter.

Q2: Does EPA approve TEAD's request to establish a limit on the maximum afterburner outlet temperature to replace the requirement to establish a limit on the maximum baghouse inlet temperature (40 CFR 63.1209(n)(1)) to ensure compliance with the semi-volatile and low volatility metals limits in 40 CFR 63.1219(a)(3) and (4)?

A2: No. EPA cannot approve the request because the temperature range of the inlet to the baghouse can vary so dramatically.

Q3: Does EPA approve TEAD's request to establish the maximum potential particulate matter (PM) generation as a limit to replace the requirement to establish the maximum ash feed rate limit to ensure compliance with 40 CFR 63.1219(a)(7)?

A3: Yes. EPA conditionally approves the request to establish the maximum potential particulate matter (PM) generation as a limit to replace the requirement to establish the maximum ash feed rate limit, provided that (i) The propellants, explosives and pyrotechnics (PEP) feed rate will not exceed 56.28 lb/hr and (ii) the PM generation will not exceed the worst case theoretical maximum based on the PEP feed rate above.

Abstract for [M100021]

Q1: Does EPA approve of the operator of a secondary aluminum continuous caster at the Commonwealth Aluminum Concast (Commonwealth) facility in Uhrichsville, Ohio, weighing the metal by measuring the volume of the slab produced by the continuous caster even if the method does not meet the one percent accuracy requirement at 40 CFR 63.1510(e)?

A1: Yes. Although these accuracies do not meet the one percent accuracy requirement at 40 CFR 63.1510(e), EPA has concluded that on the basis of the information provided the affected source should be able to meet the relevant emission standard.

Q2: May the operator record and report on a 24-hour basis the chlorine injection rate for its in-line fluxers since the chlorine meter is not accurate to one percent for the 15-minute block time period intervals specified in the rule at 40 CFR 63.1510(j)?

A2: No. In this instance, available data indicate that the required one percent accuracy can be achieved on a 16-hour basis. Therefore, EPA determines that there is no basis for extending the averaging period beyond 16 hours.

Q3: May the operator test only one of two identical in-line fluxers to measure particulate matter emissions?

A3: Yes. Because the in-line casters operate in series, the test plan does not contemplate testing of PM emissions from each fluxer individually. For the purposes of compliance calculations, however, the particulate matter is assumed to emit from the tested caster. This would represent a conservative worst-case assumption, and does not require the assumption that an equal

amount of particulate matter is emitted from each caster.

Q4: May the operator conduct performance testing for two of the four aluminum melting furnaces?

A4: Yes. EPA approves the testing of two of a total of four of the aluminum melting furnaces if these have the same physical dimensions and capacity, and the operator charges each furnace with the same materials and the same reactive fluxing agents in the same proportions, and this will maintain identical work practices. Also, Commonwealth will perform three test runs for two representative furnaces during a complete operating cycle, which is defined for purposes of this testing as the initial metal charging through the final skim, or about 1.5 hours. In addition, each melting furnace (M1 through M4) has the same physical dimensions and capacity of 233,000 tons, and maximum 21 million Btu/hour heat input natural gas burners. The testing of emissions from M1 will be representative of emissions from M3, and the testing of emissions from M2 will be representative of emissions from M4.

Abstract for [M100022]

Q1: Does EPA approve the revised comprehensive performance test plan (CPT) and continuous monitoring system (CMS) performance evaluation test (PET) plan for Sunoco Chemicals, in Haverhill, Ohio, pursuant to 40 CFR 63.1207(e)(1)(i)(A)?

A1: Yes. EPA approves Sunoco's revised CPT and CMS PET plan under MACT subpart EEE.

Q2: Does the requirement for a one-time dioxin/furan test apply to Boiler UC pursuant to 40 CFR 63.1207(b)(3)(ii) and 63.1207(b)(3)(iii)?

A2: EPA concludes that the requirement for a one-time dioxin/furan test for Boiler UC does not apply until Sunoco resumes generation and incineration of its two hazardous waste feedstreams.

Q3: Does EPA approve Sunoco's PM DIL requests for Boiler UC?

A3: Yes. EPA approves Sunoco's PN DIL requests for Boiler UC.

Q4: Does EPA approve Sunoco's request to use data from a 2006 DRE test on Boiler UC as documentation of conformance with the applicable DRE emission standard for Boiler UC pursuant to 40 CFR 63.1207(c)(2)?

A4: Yes. EPA approves Sunoco's request to use data from a 2006 DRE test on Boiler UC as documentation of conformance with the applicable DRE emission standard for Boiler UC.

Q5: Does EPA approve Sunoco's request to use data from a November

2001 DRE test on Boiler UE as documentation of conformance with the applicable DRE emission standard for Boiler UE pursuant to 40 CFR 63.1207(c)(2)?

A5: Yes. EPA approves Sunoco's request to use data from a November 2001 DRE test on Boiler UE as documentation of conformance with the applicable DRE emission standard for Boiler UE pursuant to 40 CFR 63.1207(c)(2).

Q6: Does EPA approve a maximum theoretical emission concentration request for Boiler UC and Boiler UE pursuant to 40 CFR 63.7(h) and 63.1207(m)?

A6: Yes. EPA approves a maximum theoretical emission concentration request for Boiler UC and Boiler UE pursuant to 40 CFR 63.7(h) and 63.1207(m).

Abstract for [1000025]

Q1: Are the flow monitoring procedures under 40 CFR part 60, subpart RRR, an acceptable alternative to the 40 CFR part 60, subpart NNN, requirements for the distillation operation at Flint Hills' facility in Saint Paul, Minnesota?

A1: Yes. EPA finds that in this instance the NSPS subpart RRR flow monitoring procedures are an acceptable alternative to those under NSPS subpart NNN. The NSPS subpart RRR requirement to monitor diversions from the control device accomplishes the same result (*i.e.*, providing a record of when vent streams are not controlled) as the NSPS subpart NNN requirement to monitor the flow to the control device.

Q2: Does EPA approve the use of certain monitoring, recordkeeping, and reporting provisions under 40 CFR part 60, subpart RRR, as alternative monitoring requirements to those under 40 CFR part 60, subpart NNN, for the Flint Hills' facility in Saint Paul, Minnesota?

A2: Yes. EPA approves the use of the provisions in NSPS subpart RRR as an alternative means of demonstrating compliance under NSPS subpart NNN for the specified distillation unit. As conditions of approval, the facility must comply with the recordkeeping and reporting requirements for flow indicators in NSPS subpart RRR and must maintain a schematic diagram for all related affected vent streams, collection system(s), fuel systems, control devices, and bypass systems as stated in 40 CFR 60.705(s).

Q3: Does EPA approve a waiver of initial performance tests for certain boilers and heaters at the Flint Hills' facility in Saint Paul, Minnesota?

A3: Yes. Pursuant to 40 CFR 60.8(b)(4), EPA conditionally approves the performance test waiver for the boilers and process heaters which are fired with fuel gas containing a vent stream from the Poly Unit De-Propanizer (43V-5), Saturates Gas De-Propanizer (43V-19), and Alky Unit De-Propanizer (35V-2). This waiver is applicable for boilers and process heaters that meet the definitions of a boiler or process heater in 40 CFR 60.701. Both the alternative monitoring and the waiver of performance testing are contingent upon the vent streams being vented to a fuel gas system and introduced into the flame zone with the primary fuel.

Q4: Does EPA approve Flint Hills' request for alternate flare reporting required by 40 CFR 60.665(l)(4), Subpart NNN?

A4: Yes. EPA approves Flint Hills Resources' (FHR's) request to comply with the reporting requirements on the status of the pilot flame in 40 CFR 63.654(g)(6)(i)(B) of Subpart RRR in lieu of the flare requirements in 40 CFR 60.665(l)(4) of Subpart NNN, based on approval of the AMP request.

Abstract for [M100023]

Q: What is considered a comparable new source under 40 CFR Part 63, Subpart P P P P P, when determining if reconstruction has occurred under 40 CFR 3.2 of the General Provisions at John Deere's engine testing facility in Dubuque, Iowa?

A: While the regulations do not define "comparable new source," it is clear within context of the paragraph (see 63.2, reconstruction definition) that the term stands for "a newly reconstructed existing facility." EPA has determined that the addition of the new test cells equipment to a facility, as defined in 40 CFR part 63, Subpart P P P P P, does not automatically trigger new source MACT requirements, unless the definition of reconstruction as listed in 40 CFR 63.2 is met. Based on the information provided, EPA has determined that for the John Deere Facility the cost of new equipment is not more than 50 percent of the cost to construct a comparable new facility. Therefore, the definition of reconstruction would not be met and new source MACT requirements were not triggered. The percent cost of installation should be calculated by dividing the cost of new components (*i.e.*, new test cell equipment) by the cost of a newly reconstructed existing facility (*i.e.*, cost of existing test cells and existing equipment) to determine if the cost criterion in the definition of reconstruction at 40 CFR 63.2 is met.

Abstract for [M100024]

Q1: How does the vacatur of the startup, shutdown, and malfunction (SSM) exemption provisions of 40 CFR part 63, subpart A, impact the reporting requirements of 40 CFR part 63, subpart RRR?

A1: In general, the SSM vacatur should have no impact on the reporting requirements in MACT subpart RRR.

Q2: If a monitoring malfunction occurs that does not cause excess emissions, is it a reportable occurrence?

A2: Yes, all malfunctions are required to be reported regardless of the resulting emissions.

Abstract for [1000026]

Q: Does EPA approve the request of the Enbridge Energy facility in Superior, Wisconsin, to perform an internal inspection under 40 CFR part 60, subpart Kb, on the internal floating roofs (IFR) tanks while they are in-service and out-of-service?

A: Yes. Enbridge Energy may perform an internal inspection by visually inspecting the IFR components from the top of the IFR using inspection procedures that are similar to those found in 40 CFR 63.1063(d)(1) and 40 CFR part 63, subpart WW. The proposed alternative monitoring procedure, based on 40 CFR part 63, subpart WW, would serve to satisfy the requirements of 40 CFR 60.113b(a)(4).

Abstract for [Z100001]

Q: Are sour water streams managed in sour water strippers regulated upstream of the sour water stripper exit under 40 CFR part 61, subpart FF?

A: Yes. Assuming that the total annual benzene quantity from facility waste is 10 Mg/year or greater, as provided by 40 CFR 61.342(b), the facility must comply with the requirements of 40 CFR 61.342 (c)-(h). Thus, these requirements would apply to sour water streams managed upstream of the sour water stripper exit.

Abstract for [M100025]

Q: Does EPA approve the request of Ross Incineration Services in Grafton, Ohio, for the hazardous waste incinerator operator to use alternate operating parameters in lieu of flow rate measurements for the scrubbers to avoid automatic waste feed cutoffs should a flow meter fail pursuant to 40 CFR part 63 subpart EEE?

A: Yes. EPA conditionally approves this request based upon the review of the data submitted showing that the alternate operating parameters, specifically, scrubber temperatures, water pump current, and nozzle pressure, can be measured and

maintained within a normal operating range, thereby assuring the performance of scrubber water pumps. The approval is contingent upon the ability of the facility to continuously maintain the scrubber flow rates for the radial-flow scrubber (RFS) and the gas-liquid contactor (GLC).

Abstract for [M100026]

Q: Does EPA approve the request of the Tooele Chemical Agent Disposal Facility (TOCDF) in Stockton, Utah, to modify conditions of the alternative monitoring request (AMR) approved by EPA on June 29, 2009, pursuant to 40 CFR part 63, subpart EEE, with regards to the use of a thermal desorption mercury analyzer and mercury sampling timeframes?

A: Yes, EPA approves revisions to applicable conditions of the June 26, 2009 AMR approval. All conditions of approval are restated in the current AMR approval.

Abstract for [M100027]

Q: Does EPA approve the request of the Tooele Chemical Agent Disposal Facility (TOCDF) in Stockton, Utah, to comply with the mercury emission standard (130 micrograms/dscm, corrected to 7 percent oxygen) at the Metal Parts Furnace (MPF) by: 1) continuously collecting exhaust gas samples and sampling for mercury (Hg) and taking the rolling average of the results obtained from three consecutive 4-hour sampling events, resulting in a 12-hour averaging period for compliance determination purposes, rather than relying on an operating parameter limit (OPL) for a maximum Hg feedrate as required by 40 CFR 63.1209(l)(1)(i); and (2) continuously sampling exhaust gas samples using a modified EPA method approved for use by coal-fired power plants found at 40 CFR Part 75, Appendix K rather than using Method 29 for Hg emissions, as required by 40 CFR 63.1208(b)(2)?

A: Yes. EPA conditionally approves the request provided that the facility meets all of the conditions set out in the EPA response letter.

Abstract for [M100028]

Q: Does EPA approve the request of the Tooele Chemical Agent Disposal Facility (TOCDF) in Stockton, Utah, to modify some of the Conditions of Approval contained in determination letters issued by EPA on April 27, 2006 and September 24, 2007 approving previously submitted alternative monitoring requests (AMRs) pertaining to the Manual Mercury (Hg) Emission Measurement method used during the Mustard Agent Processing in TOCDF's

Metal Parts Furnace (MPF), and to add the Manual Hg Emission Measurement method on the Liquid Incinerators (LICs)?

A: Yes. EPA conditionally approves the request, provided that the facility meets all of the conditions set out in the EPA response letter.

Abstract for [A110001]

Q1: If a city, county, municipality undertakes an "urban renewal" project that demolishes or renovates multiple single family homes, is it subject to the asbestos NESHAP regulation, NESHAP subpart M?

A1: It may be subject to the asbestos NESHAP. The city, county or municipality may be the owner or operator, depending upon the situation. As the owner or operator, the government entity must conduct a thorough inspection of each home that is identified to be demolished or renovated for the project. If the combined amount of friable asbestos or asbestos that will be made friable during the demolition or renovation operation exceeds the regulated threshold, then the demolition or renovation operation must comply with the air emission, the waste management, and the disposal requirement of the asbestos NESHAP.

Q2: Are single family homes not subject to the asbestos NESHAP based on the 1995 Clarification of Intent which described how isolated single family homes were exempt from the asbestos NESHAP?

A2: As stated in the question, the Clarification of Intent describes how to determine an isolated single family home. The "urban renewal" projects are not about isolated homes but a group of homes as part of a project that will be demolished or renovated over a period of time. In the preamble to the 1990 asbestos NESHAP amendments, EPA did not consider residential structures that are demolished as part of a commercial or public project to be exempt from this rule.

Q3: What is or please define "planning period?"

A3: Planning period is not defined in the asbestos NESHAP regulation. Planning period was identified in the 1995 Clarification of Intent to provide guidance when considering single family homes being demolished, and whether the home was considered a facility under the demolition operation. Demolition or renovation operations planned at the same time or as part of the same planning period or scheduling period are considered to be part of the same project, and that in the case of municipalities, a planning or scheduling period is often a fiscal or calendar year

or the term of a contract. The fact that demolitions might be spread out over multiple fiscal or calendar years or even multiple contracts, however, does not necessarily mean they are not occurring as part of the same planning period.

Dated: March 10, 2011.

David Hindin,

Acting Director, Office of Compliance.

[FR Doc. 2011-15416 Filed 6-20-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9321-3]

Underground Injection Control Program; Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; ExxonMobil Environmental Services Company, Pasadena TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a final decision on a no migration petition.

SUMMARY: Notice is hereby given that an exemption to the land disposal Restrictions, under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, has been granted to ExxonMobil Environmental Services Company for two Class I injection wells located at Pasadena, Texas. The company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by the petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by ExxonMobil, of the specific restricted hazardous wastes identified in this exemption, into Class I hazardous waste injection wells No. WDW-397 and WDW-398 at the Agrifos Pasadena Texas Fertilizer facility, Pasadena, Texas, until December 31, 2020, unless EPA moves to terminate this exemption. Additional conditions included in this final decision may be reviewed by contacting the Region 6 Ground Water/UIC Section. A public notice was issued April 19, 2011. The public comment period closed on June 6, 2011. No comments were received. This decision constitutes final Agency action and there is no Administrative appeal. This decision may be reviewed/appealed in compliance with the Administrative Procedure Act.

DATES: This action is effective as of June 13, 2011.

ADDRESSES: Copies of the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ-S), 1445 Ross Avenue, Dallas, Texas 75202-2733.

FOR FURTHER INFORMATION CONTACT: Philip Dellinger, Chief Ground Water/ UIC Section, EPA—Region 6, telephone (214) 665-7150.

Dated: June 13, 2011.

W. K. Honker,

Acting Division Director, Water Quality Protection Division.

[FR Doc. 2011-15388 Filed 6-20-11; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Call for Candidates

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Request for nominations.

This Notice reopens the application period announced in the **Federal Register** on January 27, 2011 (January Notice) in order to identify additional candidates. Any applicant who provided the Federal Accounting Standards Advisory Board (FASAB or the Board) with the requested materials in response to the January Notice will be considered for appointment and need not resubmit materials, although they are permitted to supplement their applications with new or additional information.

DATES: Applications must be postmarked or electronically transmitted on or before July 15, 2011. All applications will be acknowledged by e-mail or phone within 48 hours of receipt. Applicants not receiving an acknowledgement should contact the FASAB offices at (202) 512-7350 no later than July 19, 2011 to ensure that the materials were received.

ADDRESSES: Persons wishing to submit applications should send the information described below to: Wendy Payne, Designated Federal Officer, by e-mail to fasab@fasab.gov; by U.S. mail or commercial delivery service to: Federal Accounting Standards Advisory Board, Attn: Wendy Payne, Mailstop 6K17V, 441 G Street, NW., Washington, DC 20548; or by facsimile transmission to (202) 512-7366.

FOR FURTHER INFORMATION CONTACT: Wendy Payne at (202) 512-7350, or paynew@fasab.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92-463), as amended, and the FASAB Rules of Procedure, as amended in October 2010, notice is hereby given that the FASAB is currently seeking candidates (current federal employees are not eligible for appointment) to serve on the Board. Appointments to the Board are made jointly by the Secretary of the Treasury, the United States Comptroller General, and the Director of the Office of Management and Budget.

FASAB is the body designated to establish generally accepted accounting principles for federal government entities. Generally, non-federal Board members are selected from the general financial community, the accounting and auditing community, or academics. Specifically, FASAB is particularly interested in candidates who have experience as: Analysts of financial information, Economists or forecasters, Academics, Auditors, Preparers of financial information, or those otherwise knowledgeable regarding the use of financial information in decision-making.

The Board meets in Washington, DC, for two days every other month. Members are compensated for 24 days service per year based on current federal executive salaries. Travel expenses related to meeting attendance are reimbursed in accordance with federal travel regulations.

All parties wishing to be considered should submit their full name, address, telephone number and e-mail address and a brief summary identifying how their education, training, experience, or other factors would support the FASAB's work. They should also include a detailed résumé or curriculum vitae (CV).

Additional information about the FASAB can be obtained from its Web site at <http://www.fasab.gov>.

Authority: Federal Advisory Committee Act, Pub. L. 92-463.

Dated: June 16, 2011.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2011-15387 Filed 6-20-11; 8:45 am]

BILLING CODE 1610-02-P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 10 a.m. (EST) June 23, 2011.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the May 16, 2011 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
 - a. Monthly Performance Report.
 - b. Monthly Investment Report.
 - c. Legislative Report.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942-1640.

Dated: June 17, 2011.

Megan G. Grumbine,

Assistant General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2011-15649 Filed 6-17-11; 4:15 pm]

BILLING CODE 6760-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS-0990-New; 60-Day Notice]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information collection technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number,

OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690-6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60-days.

Proposed Project: Health Information Technology Research Center (HITRC) User Experience Survey Evaluation and Research—0990—New—Office of the National Coordinator for Health Information Technology—ONC.

Abstract: The HITECH Act of 2009 is designed to jumpstart electronic health

record (EHR) adoption and health information exchange (HIE) by establishing the Health Information Technology Extension Program, consisting of a National Health Information Technology Research Center (HITRC) and Regional Extension Centers (RECs). The goals of the HITRC are to provide assistance and support to the 62 RECs, to enable them to fulfill their mission. The goals of the RECs are to promote the national adoption and meaningful use of EHRs by health care providers.

ONC will conduct an evaluation of the usefulness and usability of the HITRC contractor-provided materials and services in supporting the RECs.

This evaluation will provide critical formative feedback to the HITRC, from the REC perspective, about the quality, usefulness, and ease of use of the HITRC products, resources, and services and their ability to adequately support REC needs.

ONC is requesting approval to administer the HITRC User Experience Survey to two types of REC respondents who are customers of the HITRC program: REC frontline service staff (administered quarterly) and managers (administered annually) who draw support from the HITRC. These respondents will be asked to complete an online survey.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
HITRC User Experience Survey	REC Staff	1,200	1	15/60	300
HITRC User Experience Survey	REC managers	186	1	15/60	47
Total .....	.....	.....	.....	.....	347

Mary Forbes

Paperwork Reduction Act Clearance Officer, Office of the Secretary.

[FR Doc. 2011-15339 Filed 6-20-11; 8:45 am]

BILLING CODE 4150-45-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS-0990-New]; 60-Day Notice]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the

information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690-6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Cross-Site Evaluation of the Minority Serving Institutions' HIV/AIDS Demonstration Initiative and Capacity-building Project (New)—OMB No. 0990-NEW—Office of HIV/AIDS Policy.

Abstract: Although minority populations comprise only 30% of the U.S. population, they account for nearly 65% of the new AIDS cases. As one strategy to address this disparity, the U.S. Department of Health and Human Services Office of HIV/AIDS Policy (OHAP) implemented the Minority

Serving Institutions' (MSI) HIV/AIDS Demonstration Initiative and Capacity-building Project in 7 colleges and universities serving diverse groups of Hispanic, African American, and Native American minority students. This cross-site evaluation of the project will assess changes among students in the 7 colleges over a two-year project period regarding: (1) Awareness and knowledge of risk factors and prevention methods for HIV/AIDS transmission; (2) the occurrence of high-risk behaviors; and (3) access to HIV/AIDS prevention, counseling, testing and referral services. Implementation challenges and lessons learned also will be identified. The data collected in this evaluation will provide information about how to most effectively implement HIV/AIDS interventions at MSIs; and can be used to assist the OHAP and other federal agencies in setting future priorities for HIV/AIDS prevention activities at MSIs, and potentially other educational institutions. The data will be collected through various methods and frequencies, including annual pre and post tests and surveys, and focus groups to MSI students; annual key informant interviews to MSI staff and community partners; and semi-annual outcome data reports and monthly progress reports completed by MSI staff.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
Annual Staff Key Informant Interview	MSI staff	14	1	4	56
Monthly Progress Reports	MSI HIV staff	14	12	1	168
Semi-Annual Reporting of Site Evaluation Findings.	MSI HIV staff	14	2	5	140
Annual Site Visit Partner Key Informant Interview.	MSI community partners	14	1	2	28
Pre- and Post- Tests	Students	420	2	15/60	210
Pre- and Post surveys	Students	1,000	2	1	2,000
Focus Groups	Students	50	1	1	50
Total .....	.....	1,526	.....	.....	2,652

Mary Forbes,
Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2011-15340 Filed 6-20-11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Survey of Early Care and Education.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing a data collection activity as part of the National Survey of Early Care and Education (NSECE) which will be conducted December, 2011 through

June, 2010. The objective of the NSECE is to document the nation's current need for and availability of early care and education and including school-age care (ECE/SA), and to deepen our understanding of the extent to which families' needs and preferences coordinate well with providers' offerings and constraints. The proposed collection will consist of four survey components: (1) A survey of households with children under the age of 13 for participation in a questionnaire on the need for and use of early care and education (Household Interview), (2) a survey of households with individuals providing care for children under the age of 13 in a residential setting (Home-based Provider Interview), (3) a survey of providers of care to children under 13 in a non-residential setting (Center-based Provider Interview), and (4) a survey conducted with individuals employed in center-based child care programs (Workforce Provider Interview).

These data collection efforts will provide urgently needed information about the provision of ECE/SA across the country and spanning many sectors of care providers such as community-based child care, Head Start, school-based Pre-K, family child care, family, friend and neighbor care, and after-school programs. The study will also dramatically extend the available resources for understanding how families use, seek, and cope with the ECE/SA choices that are available to them. Perhaps most significantly, the NSECE will allow the policy and research communities to merge data from families and providers at the local level—where the two actually meet.

Respondents: General population households, home-based and center-based child care providers (including public schools) serving children under 13, and selected staff members from center-based child care providers (including public schools) serving children under 13.

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Estimated annual burden hours
Household screener	83,767	1	.1	8,377
Household Interview	17,512	1	.75	13,134
Home-based Provider Interview	11,260	1	.3	3,378
Center-Based Provider Interview	12,520	1	.67	8,389
Workforce Provider Interview	9,390	1	.33	3,099

Estimated Total Annual Burden Hours: 36,377.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* OPRE Reports Clearance Officer. All requests should be

identified by the title of the information collection. *E-mail address:* OPREinfocollection@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:* 202-395-6974, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: June 13, 2011.

Steven M. Hammer,

Reports Clearance Officer.

[FR Doc. 2011-15169 Filed 6-20-11; 8:45 am]

BILLING CODE 4184-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Information Comparison with Insurance Data.

OMB No.: 0970-0342.

Description

The Deficit Reduction Act of 2005 amended Section 452 of the Social Security Act (the Act) to authorize the Secretary, through the Federal Parent Locator Service (FPLS), to conduct

comparisons of information concerning individuals owing past-due child support with information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments. Public Law 109-171, § 7306. The Federal Office of Child Support Enforcement (OCSE) operates the FPLS in accordance with section 453(a)(1) of the Act. The Federal Case Registry of Child Support Orders (FCR) is maintained in the FPLS in accordance with section 453(h)(1) of the Act.

At the option of an insurer, the comparison may be accomplished by either of the following methods. Under the first method, an insurer or the insurer's agent will submit to OCSE information concerning claims, settlements, awards, and payments. OCSE will compare that information with information pertaining to individuals owing past-due support.

Under the second method, OCSE will furnish to the insurer or the insurer's

agent a file containing information pertaining to individuals owing past-due support. The insurer or the insurer's agent will compare that information with information pertaining to claims, settlements, awards, and payments. The insurer will furnish the information resulting from the comparison to OCSE.

On a daily basis OCSE will furnish the results of the comparison by transmitting the Insurance Match Response Record to the state agencies responsible for collecting past-due child support from the individuals. The results of the comparison will be used by the state agencies to collect past-due child support from the insurance proceeds.

Respondents

Insures or their agents, including the U.S. Department of Labor and State agencies administering Workers Compensation program, and the Insurance Services Office (ISO).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Insurance Match Agreement	22	1	0.50	11
Insurance Match File	22	0.50	0.50	132

Estimated Total Annual Burden Hours: 143.

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. 2011-15354 Filed 6-20-11; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-D-0429]

Draft Guidances for Industry and Food and Drug Administration Staff: Classification of Products as Drugs and Devices and Additional Product Classification Issues; and Interpretation of the Term "Chemical Action" in the Definition of Device Under Section 201(h) of the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two related draft

guidances for industry and FDA staff entitled "Draft Guidance for Industry and FDA Staff: Classification of Products as Drugs and Devices and Additional Product Classification Issues" and "Draft Guidance for Industry and FDA Staff: Interpretation of the Term 'Chemical Action' in the Definition of Device Under Section 201(h) of the Federal Food, Drug, and Cosmetic Act." These draft guidances provide the Agency's current thinking on approaches for classifying products as drugs and devices, certain additional product classification issues, and the interpretation of the term "chemical action" under the FD&C Act.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on these draft guidances before it begins work on the final versions of these guidances, submit either electronic or written comments on the draft guidances by September 19, 2011.

ADDRESSES: Submit written requests for single copies of these draft guidances to the Office of Combination Products, 10903 New Hampshire Ave., Bldg. 32, Rm. 5129, Silver Spring, MD 20993-0002. Send one self-addressed adhesive

label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidances to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: John Barlow Weiner, Office of Combination Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5129, Silver Spring, MD 20993-0002, 301-796-8930.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of two draft guidances for industry and FDA staff entitled “Draft Guidance for Industry and FDA Staff: Classification of Products as Drugs and Devices and Additional Product Classification Issues” (Draft Classification Guidance) and “Draft Guidance for Industry and FDA Staff: Interpretation of the Term ‘Chemical Action’ in the Definition of Device Under Section 201(h) of the Federal Food, Drug, and Cosmetic Act” (Draft Chemical Action Guidance). These draft guidances provide the Agency’s current thinking on approaches for classifying products as drugs and devices, certain additional product classification issues, and the interpretation of the term “chemical action” under section 201(h).

FDA determines whether to classify a product as a drug or device based on the statutory definitions for these terms set forth in sections 201(g) and 201(h) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act)(21 U.S.C. 321(g) and 321(h)), respectively, as applied to the scientific data concerning the product that are available to FDA at the time the classification determination is made.

The Draft Classification Guidance addresses three topics: (1) It explains how to obtain a formal classification determination for a medical product; (2) it presents the Agency’s current thinking on the interpretation of the statutory definitions of device and drug, other than the term “chemical action” in the definition of device at section 201(h), which is addressed in the Draft Chemical Action Guidance, as discussed in the following paragraphs; and (3) it presents the Agency’s current thinking on the status of published intercenter jurisdictional agreements, current regulations establishing classifications, and classifications the Agency has otherwise previously made for specific products.

The definition of device at section 201(h) states, in part, that a device “does not achieve its primary intended purposes through *chemical action* within or on the body of man or other animals.” The term “chemical action” in this phrase is often important in determining whether a product meets the definition of device at section 201(h). The Draft Chemical Action Guidance presents the Agency’s current thinking on the interpretation of the term “chemical action” for purposes of this definition. The Draft Chemical Action Guidance states that a product exhibits chemical action if: “through either chemical reaction or intermolecular forces or both, the product mediates a bodily response at the cellular or molecular level, or combines with or modifies an entity so as to alter that entity’s interaction with the body of man or other animals.”

The Agency welcomes all comments on the Draft Classification Guidance and the Draft Chemical Action Guidance. In particular, we request comment on the following two topics:

1. Application of the approaches articulated in these two draft guidances to specific groups of products.

We seek input on how groups of products would be classified under these approaches and the regulatory implications of those classifications. While we welcome more general input on the approaches announced, we are seeking particular comments regarding the application of these approaches to specific products or groups of products. We note that questions concerning whether to classify a product as a drug or device have most frequently arisen with respect to products consisting of gels, liquids, semi-liquids, or powders that come into contact with the body.

We also seek input on whether or how to clarify or modify any elements or terms of the approaches presented. For example, the approach for whether a product exhibits chemical action quoted previously from the Draft Chemical Action Guidance includes the phrase “mediates a bodily response at the cellular or molecular level.” We welcome input on this phrase or any other aspect of this approach.

2. Relationship between these classification approaches and prior classification determinations.

As noted previously, the Draft Classification Guidance discusses the Agency’s current thinking on the status of the current published intercenter jurisdictional agreements, regulations establishing classifications, and other classifications of specific products (e.g., via marketing authorizations or requests for designation). We seek comment on

the concepts presented in this section of the Draft Classification Guidance. For example, we welcome comment on procedures for determining whether to change current product classifications and, if so, how to implement those changes appropriately.

These draft guidances are being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). These draft guidances, when finalized, will represent the Agency’s current thinking on classification of products as drugs and devices, certain additional product classification issues, and the interpretation of the term “chemical action” under section 201(h). They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

The draft guidance on classification of products as drugs or devices refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). The collections of information in 21 CFR part 3 have been approved under OMB control number 0910-0523.

II. Comments

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

III. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm> or <http://www.regulations.gov>.

Dated: June 15, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011-15344 Filed 6-20-11; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities; Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276-1243.

Comments are invited on: (a) Whether the proposed collections of information are 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.

Proposed Project: National Child Traumatic Stress Initiative (NCTSI) Evaluation—(OMB No. 0930-0276)—Revision

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS), will conduct the National Child Traumatic Stress Initiative (NCTSI) Evaluation. This evaluation serves multiple practical purposes: (1) To collect and analyze descriptive, outcome, and service experience information about the children and families served by the NCTSN; (2) to assess the NCTSN's impact on access to high-quality, trauma-informed care; (3) to evaluate NCTSN centers' training and consultation activity designed to promote evidence-based, trauma-informed services and the impact of such activity on child-serving systems; and (4) to assess the sustainability of the grant-funded activities to improve access to and quality of care for trauma-exposed children and their families beyond the grant period.

Data will be collected from caregivers and youth served by NCTSN centers, NCTSN and non-NCTSN administrators, NCTSN trainers, service providers trained by NCTSN centers and other training participants, administrators of mental health and non-mental health professionals from state and national child-serving organizations, and administrators of affiliate centers. Data collection will take place in all Community Treatment and Services Programs (CTS) and Treatment and Service Adaptation Centers (TSA) active during the three-year approval period. Currently, there are 45 CTS centers and 17 TSA centers active (*i.e.*, 62 active centers). After the first year, in September 2011, the 15 grantees funded in 2007 will reach the end of their data collection. At that point, additional centers may be funded or funded again. Because of this variability, the estimate of 62 centers is used to calculate burden.

The NCTSI Evaluation is composed of four distinct study components, each of which involve data collection, which are described below.

Descriptive and Clinical Outcomes

In order to describe the children served, their trauma histories and their clinical and functional outcomes, nine instruments will be used to collect data from children and adolescents who are receiving services in the NCTSN, and from caregivers of all children who are receiving NCTSN services. Data will be collected when the child/youth enters services and during subsequent follow-up sessions at three-month intervals over the course of one year. This study relies upon the use of data already being collected as a part of the Network's Core Data Set, and includes the following instruments:

- The Core Clinical Characteristics Form, which collects demographic, psychosocial and clinical information about the child being served including information about the child's domestic environment and insurance status, indicators of the severity of the child's problems, behaviors and symptoms, and use of non-Network services;
- The Trauma Information/Detail Form, which collects information on the history of trauma(s) experienced by the child being served in the NCTSN including the type of trauma experienced, the age at which the trauma was experienced, type of exposure, whether or not the trauma is chronic, and the setting and perpetrator(s) associated with the traumatic experience;
- The Child Behavior Checklist (CBCL) 1.5-5 and 6-18, which measure

symptoms in such domains such as emotionally reactive, anxious/depressed, somatic complaints, withdrawn, attention problems, aggressive behavior, sleep problems, rule-breaking behavior, social problems, thought problems, and withdrawn/depressed;

- The UCLA PTSD Short Form, which screens for exposure to traumatic events and for all DSM-IV PTSD symptoms in children who report traumatic stress experiences; and the

- The Trauma Symptoms Checklist for Children, which evaluates acute and chronic posttraumatic stress symptoms in children's responses to unspecified traumatic events across several symptom domains.

- The Trauma Symptoms Checklist for Young Children (TSCYC), which is a 90-item caretaker-report instrument developed for the assessment of trauma-related symptoms in children ages 3 to 12.

- The Parenting Stress Index Short Form (PSI-SF), which yields a total stress score from three scales: parental distress, parent-child dysfunctional interaction, and difficult child. The PSI-SF was developed from factor analysis of the PSI-Full-Length Version.

- The Children's Depression Inventory-2 Short (CDI-2S), which is a comprehensive multi-rater assessment of depressive symptoms in youth aged 7 to 17 years. Depressive symptomatology is quantified by the CDI 2 based on reports from children/adolescents, teachers and parents.

- The Global Appraisal of Individual Needs Modified Short Screener (GAIN-MSS), which is designed primarily as a screener in general populations, ages 12 and older, to quickly and accurately identify clients who have 1 or more behavioral health disorders (*e.g.*, internalizing or externalizing psychiatric disorders, substance use disorders, or crime/violence problems).

Approximately 6,000 youth and 9,700 caregivers will participate in the descriptive and clinical outcomes study over the clearance period.

Access to High Quality, Trauma-Informed Services

The NCTSI mission is to expand access to high quality, trauma-informed services for trauma-exposed children and adolescents and their families nationwide. This component of the evaluation is designed to assess NCTSI program progress in achieving this mission by collecting and analyzing data from a variety of sources addressing the question of whether access to high quality, trauma-informed services has improved and for which

demographic groups. Instruments used as a part of this study component include:

- Evidence-based Practice (EBP) and Trauma-informed Systems Change Survey (ETSC), which assesses the extent to which NCTSN training and other dissemination activities have enhanced the knowledge base and use of trauma-informed services (TIS) within child-serving agencies, centers and organizations that are not a part of the NCTSN but rather have received training from the NCTSN as well as to assess the extent to which such services are evidence-based. The survey branches into two versions adapted for project directors/administrators and human service providers (*e.g.*, mental health providers, child welfare case workers, teachers, primary care health care providers and others), allowing for questions tailored to the professional orientation and activities of each group. The ETSC survey will be used to assess the extent to which NCTSN training and dissemination activities have improved access to high quality, trauma-informed services for trauma-exposed children and their families that are served through such child-serving systems.

- The National Impact Survey, which assesses the extent to which the NCTSN has impacted the knowledge and awareness, policies, planning, programs, and practices related to trauma-informed care among state and national child-serving organizations external to the NCTSN centers.

- The Online Performance Monitoring Report (OPMR), which is primarily a mechanism for SAMHSA to monitor centers' progress towards achieving stated goals and a fulfillment of SAMHSA requirements for accountability and performance monitoring. In addition, this form will also serve as an important data source informing several components of the NCTSI evaluation.

Approximately 496 service providers and 186 administrators from NCTSN centers and organizations or agencies trained by NCTSN centers will participate in the ETSC survey. Approximately 4,000 individuals will be participating in the National Impact Survey, while approximately 62 individuals will participate in the OPMR.

Training, Evidence-Based Practices (EBPs), and Family/Consumer Partnerships

A major goal of the NCTSN is to enhance the capacity of administrators and service providers from agencies, centers and organizations associated with child-serving systems (including

mental health, child welfare, juvenile justice, education and primary care) to use trauma-informed services (TIS) with trauma-exposed children and their families. NCTSN centers promote the use of TIS within child-serving systems to increase public awareness and knowledge about trauma exposure, trauma impact, and the range of trauma-informed assessments and services that are available. For this component, the ETSC Survey will be used to assess whether agencies, schools, and organizations that are a part of child-serving systems trained by the NCTSN have become more evidence-based and trauma-informed. Two additional forms will be used including:

- The Training Summary Form (TSF), which will be completed by trainers and will collect information on the number of participants trained, the type of training (including the trauma types addressed in the training), and the topics emphasized in the training.

- The Training Sign-In Sheet (TSIS), which will be completed by this participants of NCTSN-sponsored trainings. Participants will provide their names; agency, organization or center for which they work; their roles; and contact information including e-mail addresses. In addition, they will be asked to indicate whether the evaluation may contact them for participation.

Approximately 124 trainers will complete and submit the TSF, while approximately 12,400 trainees will complete the TSIS.

Sustainability

Assessing the sustainability of the progress made by the NCTSN and its partners is a key evaluation priority identified by stakeholders advising on the redesign of the NCTSI Evaluation. Therefore, while this issue was not addressed as part of the previous evaluation design, it has been included as a new area of importance for future NCTSI evaluation. This component of the evaluation focuses on understanding the degree to which NCTSI grant activities continue after funding has ended and the factors associated with the continuation of—or lapse in—grant activities such as the implementation of evidence-based practices or approaches to strengthen trauma-informed service provision. This component collects sustainability data as part of the OPMR in the case of funded centers and, in the case of affiliate centers (centers that no longer receive SAMHSA funding but have continued involvement with the NCTSN and are defined by SAMHSA as affiliates), the following survey will be implemented:

- Sustainability Survey for Affiliate Centers, which assesses sustainability of NCTSI grant activities by collecting data on domains including grant history, funding sources and fiscal strategies, program mission, infrastructure, service delivery and continuation of practices and programs. Approximately 45 administrators of affiliate centers are expected to participate in this survey.

The revision to the currently approved information collection activities includes the extension of NCTSI Evaluation information collection activities for an additional three years. This revision also addresses the following programmatic changes:

- The number of centers for which burden was calculated is 62, which represents the number of currently active grantees (the number of centers at the time of the previous submission was 44).

- As a result of efforts to address updated evaluation priorities, reduce redundancy and consolidate multiple data collection efforts focused on national monitoring and evaluating of the NCTSI program, the request discontinues ten surveys, forms or interviews that are currently OMB-approved.

- In place of the ten surveys, forms or interviews that are currently OMB-approved that are being discontinued, and as part of the redesigned evaluation, three new data collection efforts will be implemented, including:

- Online Performance Monitoring Report Form (OPMR).

- Evidence-based Practice and Trauma-informed System Change Survey (ETSC).

- Sustainability Survey for affiliate centers.

- This request also enhances the existing Core Data Set by revising the Core Clinical Characteristics Forms and adding new instruments to address existing gaps in knowledge including:

- Trauma Symptom Checklist for Young Children (TSCYC).

- Parenting Stress Index Short Form (PSI-SF).

- Children's Depression Inventory-2 Short (CDI-2S).

- Global Appraisal of Needs Modified Short Screener (GAIN-MSS).

- A Training Sign-in Sheet (TSIS) has been developed for use at each training event sponsored by NCTSN centers. The purpose of the form is to collect brief information about NCTSN training participants.

The average annual respondent burden is estimated below.

Instrument	Number of respondents	Average number of responses per respondent	Hours per response	Total burden hours	3-Year average of annual burden hours
Caregivers Served by NCTSN Centers					
Child Behavior Checklist 1.5–5/6–18 (CBCL 1.5–5/6–18)	9,729 ¹	4 ²	0.33	12,842	4,281
Trauma Information/Detail Form	9,729	4	0.22	8,562	2,854
Core Clinical Characteristics Form	9,729	4	0.5	19,458	6,486
UCLA–PTSD Short Form (UCLA–PTSD)	7,394 ⁴	4	0.17	5,028	1,676
Trauma Symptoms Checklist for Young Children (TSCYC)	2,724 ⁵	4	0.33	3,596	1,199
Parenting Stress Index Short Form (PSI–SF)	2,919 ⁶	4	0.08	934	311
Youth Served by NCTSN Centers					
Trauma Symptoms Checklist for Children–Abbreviated (TSCC–A)	6,129 ⁷	4	0.33	8,090	2,697
Children’s Depression Inventory–2 Short (CDI–2S)	2,140 ⁹	4	0.08	685	228
Global Appraisal of Individual Needs Modified Shore Screener (GAIN–MSS)	3,989 ¹⁰	4	0.08	1,276	425
Funded NCTSN Center Project Directors or Other Administrators					
Online Performance Monitoring Report (OPMR)	62	12	0.60	446	149
Sustainability Survey for Currently—Funded Centers	62	3	0.28	52	17
NCTSN and Non-NCTSN Administrators					
Evidence-based Practice (EBP) and Trauma Informed Systems Change Survey (ETSC)—Administrator Version	186 ¹²	2	0.30	112	37
NCTSN Trainers					
Training Summary Form	124 ¹³	5	0.2	124	41
Service Providers Trained by NCTSN Centers					
Evidence-based Practice (EBP) and Trauma Informed Systems Change Survey (ETSC)—Provider Version	496 ¹⁴	3	0.3	446	149
Training Participants					
Training Sign-In Sheet (TSIS)	12,400 ¹⁵	1	.02	248	83
Mental Health and Non-Mental Health Professionals from State and National Child Serving Organizations					
National Impact Survey	4,000	1	0.5	2,000	667
Affiliate Center Administrators					
Sustainability Survey— Affiliate Centers	45	3	.28	38	19
Total summary	71,857	66	.....	.....	21,319
Total annual summary	23,952	22	.....	.....	7,106

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 8–1099, One Choke Cherry Road, Rockville, MD 20857 OR e-mail a copy to summer.king@samhsa.hhs.gov. Written comments should be received within 60 days of this notice

Dated: June 15, 2011.

Elaine Parry

Director, Office of Management, Technology and Operations.

[FR Doc. 2011–15384 Filed 6–20–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0034]

National Infrastructure Advisory Council

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Committee Management; Notice of an open Federal Advisory Committee Meeting.

SUMMARY: The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, July 12, 2011, at the Washington Marriott at Metro Center, Salon A, 775 12th Street, NW.,

Washington, DC 20005. The meeting will be open to the public.

DATE: The NIAC will meet Tuesday, July 12, 2011, from 1:30 p.m. to 4:30 p.m. The meeting may close early if the committee has completed its business. For additional information, please consult the NIAC Web site, <http://www.dhs.gov/niac>, or contact the NIAC Secretariat by phone at (703) 235–2888 or by e-mail at NIAC@dhs.gov.

ADDRESSES: The meeting will be held at the Washington Marriott at Metro Center, Salon A, 775 12th Street, NW., Washington, DC 20005.

While this meeting is open to the public, participation in the NIAC

deliberations is limited to committee members and appropriate Federal Government officials. Discussions may include committee members, appropriate Federal Government officials, and other invited persons attending the meeting to provide information that may be of interest to the Council.

Immediately following the committee member deliberation and discussion period, there will be a limited time period for public comment on listed agenda items only. Relevant public comments may be submitted in writing or presented in person for the Council to consider. Off-topic questions or comments will not be permitted or discussed. In-person presentations will be limited to three minutes per speaker, with no more than 30 minutes for all speakers. Parties interested in making in-person comments must register no fewer than 15 minutes prior to the beginning of the meeting at the meeting location. Oral comments will be permitted based upon the order of registration; all registrants may not be able to speak if time does not permit. Written comments may be sent to Nancy Wong, Department of Homeland Security, National Protection and Programs Directorate, 245 Murray Lane, SW., Mail Stop 0607, Arlington, VA 20598-0607. Written comments must be received by Nancy Wong no later than July 5, 2011, identified by **Federal Register** Docket Number DHS-2011-0034, and may be submitted by any one of the following methods:

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

- *E-mail:* NIAC@dhs.gov. Include the docket number in the subject line of the message.

- *Fax:* (703) 603-5098.
- *Mail:* Nancy Wong, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, SW., Mail Stop 0607, Arlington, VA 20598-0607.

Instructions: All written submissions received must include the words "Department of Homeland Security" and the docket number for this action. Written comments received will be posted without alteration at <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the NIAC, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Nancy Wong, National Infrastructure Advisory Council Designated Federal

Officer, Department of Homeland Security, telephone (703) 235-2888.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92-463). The NIAC shall provide the President through the Secretary of Homeland Security with advice on the security of the critical infrastructure sectors and their information systems.

The NIAC will meet to address issues relevant to the protection of critical infrastructure as directed by the President. At this meeting, the committee will receive work from a NIAC working group to review, deliberate on, and provide further direction to the working group.

Meeting Agenda

- I. Opening of Meeting
- II. Roll Call of Members
- III. Opening Remarks and Introductions
- IV. Approval of January 18, 2011, Minutes
- V. Deliberation: Information Sharing Study
- VI. Public Comment: Discussion Limited to Meeting Agenda Items and Previous or Current NIAC Studies
- VII. Closing Remarks

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the NIAC Secretariat at (703) 235-2888 as soon as possible.

Dated: June 10, 2011.

Nancy J. Wong,

Designated Federal Officer for the NIAC.

[FR Doc. 2011-15343 Filed 6-20-11; 8:45 am]

BILLING CODE 9110-09-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG-2011-0508]

Certificate of Alternative Compliance for the Passenger Vessel CHICAGO'S LEADING LADY

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the passenger vessel CHICAGO'S LEADING LADY.

DATES: The Certificate of Alternative Compliance was issued on June 02, 2011.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M-30),

U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2011-0508 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call LCDR Wm. Erik Pickering, District Nine, Prevention Branch, U.S. Coast Guard, telephone 216-902-6050. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

A Certificate of Alternative Compliance, as allowed for under 33 U.S.C. 1605(c) and 33 CFR 81.18, has been issued for the passenger vessel CHICAGO'S LEADING LADY. The vessel's primary purpose is to give architectural tours on the Chicago River. This route requires passing beneath a number of low bridges, and the clearance does not allow the masthead light to be mounted as high as required for full compliance with Annex I of the Inland Rules Act.

The Commandant, U.S. Coast Guard, certifies that full compliance with the Inland Rules Act would interfere with the special functions/intent of the vessel and would not significantly enhance the safety of the vessel's operation. Placing the masthead light in the required position would interfere with the vessel's ability to navigate the Chicago River, which has several low bridges.

The Certificate of Alternative Compliance authorizes the CHICAGO'S LEADING LADY to deviate from the requirements set forth in Annex I of the Inland Rules Act, and place its masthead light on the pilothouse visor, at a height of 13'-7" above the main deck.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: June 2, 2011.

R.C. Helland,

Captain, U.S. Coast Guard, Chief, Prevention Division, By Direction of the Commander, Ninth Coast Guard District.

[FR Doc. 2011-15353 Filed 6-20-11; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Docket ID: FEMA–2011–0019]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery**AGENCY:** Federal Emergency Management Agency, DHS.**ACTION:** 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, the Federal Emergency Management Agency (FEMA) has submitted a Generic Information Collection Request (Generic ICR): “Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery” to the Office of Management and Budget for approval under the Paperwork Reduction Act (PRA).

DATES: Submit comments on or before July 21, 2011.

ADDRESSES: Written comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to oir.submission@omb.eop.gov or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address FEMA-Information-Collections-Management@dhs.gov.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration’s commitment to improving service delivery. By qualitative feedback we mean information that provides useful

insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice, which the Office of Management and Budget published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide FEMA’s projected average estimates for the next 3 years:¹

Current Actions: New collection of information.

¹ The 60-day notice included the following estimate of the aggregate burden hours for this generic clearance federal-wide:

Average Expected Annual Number of activities: 25,000.

Average number of Respondents per Activity: 200.

Annual responses: 5,000,000.

Frequency of Response: Once per request.

Average minutes per response: 30.

Burden hours: 2,500,000.

Type of Review: New Collection (OMB No. 1660–NEW).

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Average Expected Annual Number of Activities: 4.

Respondents: 173,800.

Annual responses: 173,800.

Frequency of Response: Once per request.

Average minutes per response: .12.

Burden hours: 20,142 hours.

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 Office of Management and Budget control number.

Dated: June 8, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–15361 Filed 6–20–11; 8:45 am]

BILLING CODE 9111–19–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA–3321–EM; Docket ID FEMA–2011–0001]

Tennessee; 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 Tennessee (FEMA–3321–EM), dated May 4, 2011, and related determinations.

DATES: *Effective Date:* June 7, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective June 7, 2011.

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. 2011–15323 Filed 6–17–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1984–
DR; Docket ID FEMA–2011–0001]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1984–DR), dated May 13, 2011, and related determinations.

DATES: *Effective Date:* May 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: Notice is hereby given that, in a letter dated May 13, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of South Dakota resulting from flooding beginning on March 11, 2011, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and

Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark A Neveau, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Dakota have been designated as adversely affected by this major disaster:

Aurora, Beadle, Brookings, Brown, Buffalo, Clark, Codington, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hughes, Hyde, Jackson, Jerauld, Kingsbury, Lake, Marshall, Miner, Moody, Perkins, Potter, Roberts, Sanborn, Spink, and Sully Counties for Public Assistance.

All counties within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

June 14, 2011.

W. Craig Fugate,
Administrator, Federal Emergency
Management Agency.

[FR Doc. 2011–15310 Filed 6–20–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1983–
DR; Docket ID FEMA–2001–0001]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA–1983–DR), dated May 11, 2011, and related determinations.

DATES: *Effective Date:* May 11, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 11, 2011, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Mississippi resulting from flooding beginning on May 3, 2011, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate subject to completion of Preliminary Damage Assessments (PDAs), unless you determine that the incident is of such unusual severity and magnitude that PDAs are not required to determine the need for supplemental Federal assistance pursuant to 44 CFR 206.33(d).

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Terry L. Quarles, of FEMA, is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Mississippi have been designated as adversely affected by this declared major disaster:

Adams, Bolivar, Claiborne, Coahoma, DeSoto, Humphreys, Issaquena, Jefferson, Sharkey, Tunica, Warren, Washington, Wilkinson, and Yazoo Counties for Individual Assistance.

All counties within the State of Mississippi are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

June 14, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011-15311 Filed 6-20-11; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-1982-DR; Docket ID FEMA-2011-0001]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA-1982-DR), dated May 10, 2011, and related determinations.

DATES: *Effective Date:* May 10, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 10, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief

and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”), as follows:

I have determined that the damage in certain areas of the State of Minnesota resulting from severe storms and flooding beginning on March 16, 2011, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the “Stafford Act”). Therefore, I declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Paul J. Ricciuti, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Minnesota have been designated as adversely affected by this major disaster: Big Stone, Blue Earth, Brown, Carver, Chippewa, Clay, Grant, Lac qui Parle, Le Sueur, Lyon, McLeod, Nicollet, Redwood, Renville, Scott, Sibley, Stevens, Traverse, Wilkin, and Yellow Medicine Counties for Public Assistance. Direct Federal assistance is authorized.

All counties within the State of Minnesota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036,

Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: June 14, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011-15312 Filed 6-20-11; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-1980-DR; Docket ID FEMA-2011-0001]

Missouri; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA-1980-DR), dated May 9, 2011, and related determinations.

DATES: *Effective Date:* June 6, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 6, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: June 14, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011-15313 Filed 6-17-11; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-1979-DR; Docket ID FEMA-2011-0001]

Tennessee; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA-1979-DR), dated May 9, 2011, and related determinations.

DATES: *Effective Date:* June 7, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 7, 2011.

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. 2011-15322 Filed 6-20-11; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-1974-DR; Docket ID FEMA-2011-0001]

Tennessee; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee (FEMA-1974-DR), dated May 1, 2011, and related determinations.

DATES: *Effective Date:* June 7, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 1, 2011.

Jefferson and Marion Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011-15321 Filed 6-17-11; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-1981-DR; Docket ID FEMA-2011-0001]

North Dakota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Dakota (FEMA-1981-DR), dated May 10, 2011, and related determinations.

DATES: *Effective Date:* June 7, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Dakota is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 10, 2011.

Billings and Divide Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011-15320 Filed 6-17-11; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[Internal Agency Docket No. FEMA-1975-DR; Docket ID FEMA-2011-0001]

Arkansas; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arkansas (FEMA-1975-DR), dated May 2, 2011, and related determinations.

DATES: *Effective Date:* June 3, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 3, 2011.

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. 2011-15319 Filed 6-20-11; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF THE INTERIOR

Central Utah Project Completion Act: Availability of Draft Environmental Assessment; Block Notice 1A, Heber Sub-Area Irrigation to M&I Water Conversion, Wasatch County, UT

AGENCY: Department of the Interior, Office of the Assistant Secretary—Water and Science.

ACTION: Notice.

SUMMARY: The Central Utah Water Conservancy District (CUWCD) and the U.S. Department of the Interior (Interior), as joint lead agencies, are proposing to administratively convert Central Utah Project (CUP) Bonneville Unit water delivered under Development Block Notice No. 1A and currently dedicated to the Heber Sub-Area from irrigation to municipal and industrial (M&I) use. The conversion would include up to 12,100 acre-feet of irrigation water in Wasatch County that is currently intended to provide supplemental irrigation water to commercially viable agricultural tracts that have been deemed irrigable under Bureau of Reclamation (Reclamation) law. The irrigation water would be converted incrementally to M&I use, when requested by petitioners and contract holders, over a period of up to 25 years.

DATES: Submit written comments on the Draft EA by *July 21, 2011*.

ADDRESSES: Send written comments on the Draft EA to Sarah Sutherland, Heber

Sub-Area Irrigation to M&I Water Conversion, 355 West University Parkway, Orem, UT 84058-7303, by e-mail to sarah@cuwcd.com, or by Fax at (801) 226-7171. Copies of the Draft EA are available for inspection at: Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah 84058-7303, or the Department of the Interior, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606. In addition, the document is available at <http://www.cuwcd.com> and <http://www.cupcao.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Hansen, (801) 379-1238, or e-mail at lhansen@usbr.gov.

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 15, 2011.

Reed R. Murray,

Program Director, Central Utah Project Completion Act, Department of the Interior.

[FR Doc. 2011-15359 Filed 6-20-11; 8:45 am]

BILLING CODE 4310-MN-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R5-R-2010-N244; BAC-4311-K9-S3]

Bombay Hook National Wildlife Refuge, Kent County, DE; Comprehensive Conservation Plan and Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and associated environmental assessment (EA) for Bombay Hook National Wildlife Refuge (BHNWR). We provide this notice in compliance with our policy to advise other Federal and State agencies, Tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, please send your written comments by

September 1, 2011. Submit comments by one of the methods listed under **ADDRESSES**. We will announce opportunities for public input in local news media throughout the CCP process.

ADDRESSES: Send your comments or requests for more information on the planning process by any of the following methods.

E-mail: northeastplanning@fws.gov. Include "Bombay Hook NWR" in the subject line of the message.

Fax: Attn: Thomas Bonetti, 413-253-8468.

U.S. Mail: Thomas Bonetti, Refuge Planner, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035.

In-Person Drop-off: You may drop off comments during regular business hours at the above address, or at Bombay Hook National Wildlife Refuge, 2591 Whitehall Neck Road, Smyrna, DE 19977. Please call 302-653-9345 for directions.

FOR FURTHER INFORMATION CONTACT: Michael Stroeh, Project Leader, Bombay Hook National Wildlife Refuge, 2591 Whitehall Neck Road, Smyrna, DE 19977; 302-653-9345 (phone); 302-653-0684 (fax); FW5_BHNWR@fws.gov (e-mail) or Web site: <http://www.fws.gov/northeast/bombayhook/>.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate the process for developing a CCP for BHNWR, located in Kent County, Delaware. This notice complies with our CCP policy to: (1) Advise other Federal and State agencies, Tribes, and the public of our intention to conduct detailed planning on this refuge, and (2) obtain suggestions and information on the scope of issues to consider in the environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) (Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal

mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Our CCP process provides participation opportunities for Tribal, State, local government agencies, organizations, and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of BHNWR.

We will conduct the environmental review of this project and develop an EA in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), NEPA regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, and our policies and procedures for compliance with those laws and regulations.

Bombay Hook National Wildlife Refuge

Under Executive Order (EO) 7643, dated June 22, 1937, BHNWR was established “* * * as a refuge and breeding ground for migratory birds and other wildlife. * * *” Two other authorities supported additional land protection: the Migratory Bird Conservation Act “* * * for use as an inviolate sanctuary, or for any other management purpose, for migratory birds” (16 U.S.C. 715d) and the General Services Administration. Transfer Authority for “* * * carrying out the national migratory bird management program” (16 U.S.C. 667b).

The refuge currently encompasses 16,251 acres, located in Kent County, Delaware. Comprised of 80 percent tidal salt marsh, it also includes 1,100 acres

of impounded freshwater pools, brushy and timbered swamps, and timbered and grassy upland. The refuge's location along the Atlantic Flyway makes it a vital resting and feeding spot for a large number and diversity of birds.

Popular attractions within the refuge include a wide array of habitats for wildlife observation and photography, the 12-mile auto tour route, and five nature trails, including Bear Swamp Boardwalk and Trails that are handicap accessible. The refuge also provides other wildlife-dependent recreational opportunities such as hunting deer, turkey, small game, and waterfowl, and has an established environmental education program. The historic circa-1753 Allee House is located on the refuge and requires restoration before it can be re-opened to the public.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities that we may address in the CCP. We have briefly summarized these issues below. During public scoping, we may identify additional issues.

Climate Change and Interior Marsh Loss

A growing body of evidence indicates that accelerating climate change, associated with increasing global temperatures, is affecting water, land, and wildlife resources. Along the Delaware Bay, rising sea levels have begun to affect fish and wildlife habitats, including those used by waterfowl, wading birds, and shorebirds on our national wildlife refuges. Interior marsh loss is occurring at a rate of approximately 58 acres per year at the refuge, and this important habitat is primarily converting to open water. Successful conservation strategies will require an understanding of climate change and the ability to predict how those changes will affect fish and wildlife at multiple scales.

Mosquito Control

Balancing the needs of wildlife and people is becoming more difficult as residential developments encroach upon wild areas and more visitors participate in wildlife-dependent recreational opportunities on the refuge. Providing quality habitat in sufficient quantities for an increasing number of species and individuals is challenging to wildlife managers and biologists. Mosquitoes are a part of the natural environment and a food source for a variety of wildlife. More importantly, insecticides, in particular adulticides that are used to control mosquitoes, kill non-target insects that are utilized by

fish, amphibians, and migratory birds as important food sources. BHNWR will continue to work with the State's Mosquito Control Section related to mosquito control on the refuge while striving to protect the biological integrity, diversity, and environmental health of the refuge.

Allee House

The Allee House at BHNWR stands today, as it did in the 18th century, overlooking the fields and marshes of Kent County. The original restoration of the Allee House was completed in 1966, and in 1971, it was placed on the National Register of Historic Places. The Allee House is in need of major repairs, and is closed to visitors until further notice. A Comprehensive Condition Assessment and Preventive Maintenance Plan were completed in 2010. The work required to properly protect and restore the house to historical standards is extensive and costly and is estimated at a cost of \$1,000,000.

Farming

Cooperative farming has been utilized on the refuge since its establishment. Farming is still considered a viable wildlife management tool, but the role of the farming program has changed over the years. BHNWR suspended the cooperative farming program in January 2010 because the NEPA documentation was not completed. Subsequently, a complaint was filed in Federal court in March 2010 to cease cooperative farming on the refuge. We will evaluate the farming program and its support of our conservation priorities in the CCP process.

Hunting

On the Delmarva Peninsula, hunting is a traditional outdoor pastime that is deeply rooted in American and Delaware heritage. Opportunities for public hunting are decreasing with increasing private land development. Refuge lands thus become increasingly important in the region as a place to engage in this activity. Hunting will continue to be an integral component of the public use program at the refuge. The Service Manual (605 FW 2) states that hunting programs must provide quality experiences for the public, be compatible with the mission of the NWRS and the purposes of the refuge, and, to the extent practicable, be consistent with State fish and wildlife laws and regulations. In scoping for the CCP, we invite suggestions on how to improve the current hunting program.

Public Meetings

We will give the public an opportunity to provide input at public meetings. You can obtain the schedule from the refuge manager or planning team leader (see **FOR FURTHER INFORMATION CONTACT**). We will also announce public meetings in the local news media. You may also send comments anytime during the planning process by mail, e-mail, or fax (see **ADDRESSES**). There will be additional opportunities to provide public input once we have prepared a draft CCP.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 19, 2011.

Wendi Weber,

Acting Regional Director, Region 5, U.S. Fish and Wildlife Refuge, Hadley, MA 01035.

[FR Doc. 2011-15356 Filed 6-20-11; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[LLAK930000.L1310000.EI0000.241A]

Call for Nominations and Comments for the 2011 National Petroleum Reserve—Alaska Oil and Gas Lease Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) Alaska State Office, under the authority of 43 CFR 3131.2, is issuing a call for nominations and comments on tracts for oil and gas leasing for the 2011 National Petroleum Reserve—Alaska (NPR-A) oil and gas lease sale. Available tracts are within the Northeast and Northwest Planning Areas of the NPR-A. Maps of the NPR-A showing available areas are online at <http://www.blm.gov/ak>.

DATES: BLM-Alaska must receive all nominations and comments on these tracts for consideration on or before July 21, 2011.

ADDRESSES: Mail nominations and/or comments to: State Director, Bureau of

Land Management, Alaska State Office, 222 West 7th Ave., Mailstop 13, Anchorage, AK 99513. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: Ted Murphy, Deputy State Director, BLM—Alaska Division of Resources, 907-271-4413. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Describe and depict all tract nominations on the NPR-A map by outlining your area(s) of interest. NPR-A maps, legal descriptions of the tracts, and additional information are available through the BLM-Alaska Web site at <http://www.blm.gov/ak>.

Bud Cribley,

Alaska State Director.

[FR Doc. 2011-15385 Filed 6-20-11; 8:45 am]

BILLING CODE 4310-JA-P

DEPARTMENT OF THE INTERIOR**National Park Service**

[2253-665]

Notice of Inventory Completion: Western Michigan University, Department of Anthropology, Kalamazoo, MI

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: Western Michigan University, Department of Anthropology, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact Western Michigan

University, Department of Anthropology. Disposition of the human remains and associated funerary objects to the Indian tribe stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Western Michigan University, Department of Anthropology, at the address below by July 21, 2011.

ADDRESSES: LouAnn Wurst, Department of Anthropology, Western Michigan University, 1005 Moore Hall, Kalamazoo, MI 49008, telephone (269) 387-2753.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of Western Michigan University, Department of Anthropology, Kalamazoo, MI. The human remains and associated funerary objects were removed from Mendon Township, St. Joseph County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Western Michigan University, Department of Anthropology, professional staff in consultation with representatives of the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan (formerly the Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; and the Saginaw Chippewa Indian Tribe of Michigan (hereinafter referred to as "The Tribes"). The Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Nottawaseppi Huron Band of the Potawatomi, Michigan; and the Saginaw Chippewa Indian Tribe of Michigan have sent the Western Michigan University, Department of Anthropology, letters of support and do

not object to disposition of the human remains and associated funerary objects described in this notice to the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

History and Description of the Remains

In 1988, human remains representing a minimum of one individual were removed from the Kline Site, in Mendon Township, St. Joseph County, MI, during excavation by the Western Michigan University field school directed by Dr. William Cremin. The remains were encountered during excavation of the agricultural plow zone. As a result, the burial was heavily disturbed and the human remains were shattered into 128 fragments. After the field season was completed, the remains were transferred to Western Michigan University's anthropology department for further curation and study. The remains were too fragmentary for morphological identification. No known individual was identified. The 33 associated funerary objects are 1 green slate gorget, 1 ceramic elbow pipe, 1 Levanna type triangular point, 1 broken lithic biface (possible projectile point base), 1 ceramic body sherd, 26 lithic flakes, 1 vial with residue from clay pipe, and 1 small bag containing a soil sample.

Determinations Made by the Western Michigan University, Anthropology Department

Officials of Western Michigan University, Department of Anthropology, have determined that:

- Based on the associated funerary objects and oral traditions, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- Multiple lines of evidence, including the Chicago Treaty of 1833, continued occupation of the area, and oral tradition, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Tribes.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 33 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

• Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains and associated funerary objects is to the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact LouAnn Wurst, Department of Anthropology, Western Michigan University, 1005 Moore Hall, Kalamazoo, MI 49008, telephone (269) 387-2753, before July 21, 2011. Disposition of the human remains and associated funerary objects to the Pokagon Band of Potawatomi Indians, Michigan and Indiana, may proceed after that date if no additional requestors come forward.

Western Michigan University, Department of Anthropology, is responsible for notifying The Tribes that this notice has been published.

Dated: June 15, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011-15428 Filed 6-20-11; 8:45 am]

BILLING CODE 4312-60-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Inventory Completion: University of Oregon Museum of Natural and Cultural History, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Oregon Museum of Natural and Cultural History has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the University of Oregon Museum of Natural and Cultural History. Repatriation of the human remains to the Indian tribe(s) stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains

should contact the University of Oregon Museum of Natural and Cultural History at the address below by July 21, 2011.

ADDRESSES: Dr. Pamela Endzweig, Director of Collections, University of Oregon Museum of Natural and Cultural History, 1224 University of Oregon, Eugene, OR 97403-1224, telephone (541) 346-5120.

SUPPLEMENTARY INFORMATION: Notice is hereby given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the University of Oregon Museum of Natural and Cultural History, Eugene, OR. The human remains were removed from an unknown site, but possibly from Lane County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by University of Oregon Museum of Natural and Cultural History professional staff in consultation with representatives of the Confederated Tribes of the Grand Ronde Community of Oregon and Confederated Tribes of Siletz Indians of Oregon (previously listed as Confederated Tribes of the Siletz Reservation, Oregon).

History and Description of the Remains

At an unknown date, human remains representing a minimum of one individual were acquired by the museum. Museum records indicate that their provenience is "unknown/is possibly the Creswell burial excavated by Peterson." Based on museum records, the remains may have been recovered from Creswell, Lane County, OR. Elsewhere, the remains are cataloged as "unknown, Indian." No known individual was identified. No associated funerary objects are present.

The skeletal characteristics of the human remains are not suggestive of race. Historical documents, ethnographic sources, and oral history indicate that the Kalapuya people have occupied the southern Willamette Valley since precontact times in the area where the remains may have been recovered. Based on the information available, the individual is assumed to

be Native American, and possibly of Kalapuya cultural affiliation. Descendants of the Kalapuya are members of the Confederated Tribes of the Grand Ronde Community of Oregon and Confederated Tribes of Siletz Indians of Oregon.

Determinations Made by the University of Oregon Museum of Natural and Cultural History

Officials of the University of Oregon Museum of Natural and Cultural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Tribes of the Grand Ronde Community of Oregon and Confederated Tribes of Siletz Indians of Oregon.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Pamela Endzweig, Director of Collections, University of Oregon Museum of Natural and Cultural History, 1224 University of Oregon, Eugene, OR 97403-1224, telephone (541) 346-5120, before July 21, 2011. Repatriation of the human remains to the Confederated Tribes of the Grand Ronde Community of Oregon and/or Confederated Tribes of Siletz Indians of Oregon may proceed after that date if no additional claimants come forward.

The University of Oregon Museum of Natural and Cultural History is responsible for notifying the Confederated Tribes of the Grand Ronde Community of Oregon and the Confederated Tribes of Siletz Indians of Oregon that this notice has been published.

Dated: June 15, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011-15429 Filed 6-20-11; 8:45 am]

BILLING CODE 4312-50-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Prineville District, Prineville, OR and University of Oregon Museum of Natural and Cultural History, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, Prineville District has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Bureau of Land Management, Prineville District. Repatriation of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Bureau of Land Management, Prineville District at the address below by July 21, 2011.

ADDRESSES: Molly M. Brown, Bureau of Land Management, 3050 NE 3rd St., Prineville, OR 97754, telephone (541) 416-6766.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of the Interior, Bureau of Land Management, Prineville District, Prineville, OR, and in the possession of the University of Oregon Museum of Natural and Cultural History, Eugene, OR. The human remains and associated funerary objects were removed from Jefferson County, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The

National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Bureau of Land Management's Prineville District and Museum of Natural and Cultural History professional staff in consultation with representatives of the Burns Paiute Tribe and the Confederated Tribes of the Warm Springs Reservation of Oregon.

History and Description of the Remains

In 1962, human remains representing one individual were removed from site 35JE52, in Jefferson County, OR, during excavations by University of Oregon archeologists. No known individual was identified. The three associated funerary objects consist of fragments of matting.

Based on archeological context, the individual has been determined to be Native American. In April 1961, the site 35JE52, also known as the Peninsula II site, was first recorded by the Klamath County Archaeological Survey. The site is a rockshelter with pictographs and adjacent shell middens located at the base of a cliff on the east bank of the Deschutes River. The age of occupation of the site is unknown. The Museum of Natural and Cultural History reported the remains to the Confederated Tribes of the Warm Springs Reservation in its March 1996 NAGPRA inventory. In 2007, the Bureau of Land Management, Prineville District, in conjunction with Archaeological Resources Protection Act (ARPA) investigations concerning site 35JE52, contacted the museum. At that time, the museum learned that the site is on Federal land, and the NAGPRA notification process was referred to the Bureau of Land Management officials.

Oral traditions and ethnographic reports indicate that site 35JE52 lies within the historic territory of Sahaptin-speaking Tenino or Warm Springs peoples whose descendants are culturally affiliated with the present-day Confederated Tribes of the Warm Springs Reservation of Oregon. The Confederated Tribes of the Warm Springs Reservation is composed of three Wasco bands, four Warm Springs bands, and Northern Paiutes. The Columbia River-based Wasco were the easternmost group of Chinookan-speaking Indians. The Sahaptin-speaking Warm Springs bands lived farther east along the Columbia River and its tributaries. Oral traditions and ethnographic information also indicated that site 35JE52 lies within a region that was occasionally used during historic times by Northern Paiute people whose descendants are culturally affiliated

with present-day members of the Burns Paiute Tribe. Ethnographic data indicates that the boundaries between Sahaptin speakers and Northern Paiutes were quite flexible allowing for intertribal exchange. The Burns Paiute Tribe includes Northern Paiutes, who spoke a Uto-Aztecan language and who historically occupied and used the greater southeastern Oregon region.

Determinations Made by the Bureau of Land Management, Prineville District

Officials of the Bureau of Land Management, Prineville District have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the three objects described above are reasonably believed to have been placed with or near the individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Burns Paiute Tribe and the Confederated Tribes of the Warm Springs Reservation of Oregon.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Molly M. Brown, Bureau of Land Management, 3050 NE 3rd St., Prineville, OR 97754, telephone (541) 416-6766, before July 21, 2011. Repatriation of the human remains and associated funerary objects to the Burns Paiute Tribe and Confederated Tribes of the Warm Springs Reservation of Oregon may proceed after that date if no additional claimants come forward.

The Bureau of Land Management, Prineville District is responsible for notifying the Burns Paiute Tribe and the Confederated Tribes of the Warm Springs Reservation of Oregon that this notice has been published.

Dated: June 15, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011-15430 Filed 6-20-11; 8:45 am]

BILLING CODE 4312-50-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Inventory Completion: Fowler Museum at UCLA, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Fowler Museum at UCLA has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Fowler Museum at UCLA. Disposition of the human remains to the tribe stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Fowler Museum at UCLA at the address below by July 21, 2011.

ADDRESSES: Wendy G. Teeter, PhD, Curator of Archaeology, Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095-1549, telephone (310) 825-1864.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Fowler Museum at UCLA, Los Angeles, CA. The human remain was removed from Humboldt County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Fowler Museum at UCLA professional staff in consultation with representatives of the Bear River Band of the Rohnerville Rancheria, California; Blue Lake Rancheria, California; Smith River Rancheria, California; Wiyot Tribe, California (formerly the Table Bluff Reservation—Wiyot Tribe); and the

Yurok Tribe of the Yurok Reservation, California. The Wiyot Tribe, California, requested the transfer of control of the individual described in this notice. The Bear River Band of the Rohnerville Rancheria, California, and the Blue Lake Rancheria, California, sent letters of support for the transfer of control to the Wiyot Tribe.

History and Description of the Remains

In the first half of the 20th century, a human remain representing one individual was most likely removed from Eureka, Humboldt County, CA. The human remain is a mandible from a female. It was found in the Bird and Mammal collection of the UCLA Department of Biology and subsequently transferred to the Fowler Museum at UCLA. According to the Bird and Mammal collection accession records, Loye Miller, a biologist who worked in the first half of the 20th century, collected it from an unknown person. The human remain is labeled "W.H.M.M. #313 Eureka, California." "W.H.M.M." stands for the Wellcome Historic Medical Museum. A search of the Wellcome archives produced no documentation directly related to this remain and the circumstances surrounding its excavation or collection are unknown. However, the Wellcome Museum did purchase remains from several collectors from the Eureka region. Therefore, it is reasonably believed that this individual was received from one of these collectors and removed from the Humboldt County area. No known individual was identified. No associated funerary objects are present.

Based on the records and condition of the mandible, archeologists have determined that the human remain probably comes from a coastal shell midden and is of fairly late age. The soil in the redwood forest areas of the Humboldt County area is very acidic, and bone does not survive long in the ground. However, the calcium carbonate from the shells in the shell mounds in the coastal areas helps preserve bone, and thus several hundred year-old burials are found in shell mounds in the Eureka area. Loud (1918) recorded shell mound sites in Eureka, on Indian (Gunther) Island and around the margins of Humboldt Bay, most of which have associated Wiyot village place names and burials and have been dated to the Late Prehistoric Period between A.D. 700-1100 (Loud 1918; Heizer & Elsasser 1964; Tushingham 2010).

Determinations Made by the Fowler Museum at UCLA

Officials of the Fowler Museum at UCLA have determined that:

- Based on the analysis performed by a physical anthropologist it is determined that the mandible is Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Multiple lines of evidence, including the Wiyot Tribe's 1978 Constitution, treaties, Acts of Congress, Executive Orders, and other credible lines of evidence obtained through consultation with tribal representatives, indicate that the land from which the Native American human remain was removed is the aboriginal land of the Wiyot people. Present-day Wiyot citizens are enrolled in the following Federally-recognized tribes: the Wiyot Tribe, California; Bear River Band of the Rohnerville Rancheria, California; and Blue Lake Rancheria, California.
- Pursuant to 25 U.S.C. 3001(9), the human remain described in this notice represents the physical remains of one individual of Native American ancestry.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remain is to the Wiyot Tribe, California.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Wendy G. Teeter, PhD, Curator of Archaeology, Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095-1549, telephone (310) 825-1864, before July 21, 2011. Disposition of the human remain to the Wiyot Tribe, California, may proceed after that date if no additional requestors come forward.

The Fowler Museum at UCLA is responsible for notifying the Bear River Band of the Rohnerville Rancheria, California; Blue Lake Rancheria, California; Smith River Rancheria, California; Wiyot Tribe, California; and the Yurok Tribe of the Yurok Reservation, California, that this notice has been published.

Dated: June 15, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011-15434 Filed 6-20-11; 8:45 am]

BILLING CODE 4312-50-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Inventory Completion: Western Michigan University, Department of Anthropology, Kalamazoo, MI

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: Western Michigan University, Department of Anthropology, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Western Michigan University, Department of Anthropology. Disposition of the human remains and associated funerary objects to the Indian tribe stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Western Michigan University, Department of Anthropology, at the address below by July 21, 2011.

ADDRESSES: LouAnn Wurst, Department of Anthropology, Western Michigan University, 1005 Moore Hall, Kalamazoo, MI 49008, telephone (269) 387-2753.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Western Michigan University, Department of Anthropology, Kalamazoo, MI. The human remains and associated funerary objects were removed from Middlebury Township, Shiawassee County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects.

The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Western Michigan University, Department of Anthropology, professional staff in consultation with representatives of the Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and the Saginaw Chippewa Indian Tribe of Michigan.

History and Description of the Remains

In 1974, human remains representing a minimum of 19 individuals were removed from the Gilde site, Middlebury Township, Shiawassee County, MI. The Michigan History Division, now the Michigan Historical Center, investigated the burials and conducted salvage excavations. The individuals are represented by 2,000 fragmentary remains. The ages of the individuals range from infants to adults, however, a determination of the sex of the individuals was not possible due to the fragmentary nature of the remains. The burial was inadvertently uncovered in 1974 by construction crews of the Central Michigan Sand and Gravel Company during gravel mining. The investigators noted that the heavily disturbed burials consisted of several deep pits covered with red ochre, which indicates that the site dates to the Late Archaic period (3000 B.C. to 1000 B.C.) since the use of red ochre in burials is a hallmark of this period in the Great Lakes. After recovery, the remains and funerary objects were transferred to Western Michigan University's anthropology department for further curation and study by Dr. Robert Sundick. No known individuals were identified. The 92 associated funerary objects are 79 fragments of bone from two Blue Racer snakes (*Columber constrictor foxi*), 12 fragments representing white-tailed deer and unidentified small and medium mammals, and 1 lot of soil samples recovered from the excavations.

Determinations Made by Western Michigan University, Department of Anthropology

Officials of Western Michigan University, Department of Anthropology, have determined that:

- Based on skeletal and dental morphology, and the Late Archaic date of the site, the human remains and

associated funerary objects are Native American.

- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.

- Multiple lines of evidence, such as the Treaty of Saginaw 1819 (also known as the Treaty with the Chippewa of 1819), continued occupation of the area, and oral tradition, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Saginaw Chippewa Indian Tribe of Michigan.

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 19 individuals of Native American ancestry.

- Pursuant to 25 U.S.C. 3001(3)(A), the 92 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to the Saginaw Chippewa Indian Tribe of Michigan.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact LouAnn Wurst, Department of Anthropology, Western Michigan University, 1005 Moore Hall, Kalamazoo, MI 49008, telephone (269) 387-2753, before July 21, 2011. Disposition of the human remains and associated funerary objects to the Saginaw Chippewa Indian Tribe of Michigan may proceed after that date if no additional requestors come forward.

Western Michigan University, Department of Anthropology, is responsible for notifying the Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and the Saginaw Chippewa Indian Tribe of Michigan, that this notice has been published.

Dated: June 15, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011-15437 Filed 6-20-11; 8:45 am]

BILLING CODE 4312-50-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Inventory Completion: Florida Department of State/Division of Historical Resources, Tallahassee, FL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Florida Department of State/Division of Historical Resources has completed an inventory of human remains, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the human remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Florida Department of State/Division of Historical Resources. Disposition of the human remains to the Indian tribe stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Florida Department of State/Division of Historical Resources at the address below by July 21, 2011.

ADDRESSES: Ryan J. Wheeler, State Archaeologist, Florida Department of State/Division of Historical Resources, 1001 de Soto Park Dr. Tallahassee, FL 32301, telephone (850) 245-6301.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Florida Department of State/Division of Historical Resources, Tallahassee, FL. The human remains were removed from Alachua, Miami-Dade, Duval, and Sumter Counties, FL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Florida Department of State/Division of Historical Resources professional staff in consultation with representatives of

the Miccosukee Tribe of Indians of Florida. Requests for consultation were also sent to the Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; and the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations). The Miccosukee Tribe of Indians of Florida requested that the remains described in this notice be transferred to their control so that reburial can occur at or near the original areas of removal. There are no objections to the disposition to the Miccosukee Tribe of Indians of Florida by the other Indian tribes contacted by Florida Department of State/Division of Historical Resources.

History and Description of the Remains

In October and November 2006, human remains representing a minimum of one individual were removed from site 8AL832, in Alachua County, FL. Archeological site 8AL832 is described as a dense scatter of lithic and ceramic artifacts, associated with the pre-European contact Native American Alachua and St. Johns cultures of the area (circa A.D. 700 to 1500). The remains were found during archeological monitoring during the development of Ficke Gardens at the University of Florida. The archeologists that found the remains contacted the State Archaeologist. Based on consultation with the State Archaeologist, the district medical examiner was asked to investigate the discovery. The district medical examiner, with assistance from the C.A. Pound Human Identification Laboratory and Dr. John Krigbaum, University of Florida, Department of Anthropology, determined that the remains were Native American. On August 11, 2008, the remains were transferred to the Florida Department of State/Division of Historical Resources. The remains of this individual are 12 bone and tooth fragments. No known individual was identified. No associated funerary objects are present.

In June 2007, human remains representing a minimum of two individuals were removed from site 8DA5918 at the White Rock Mine, in Miami-Dade County, FL. Archeological site 8DA5918 is described as a multi-component black earth midden deposit on a relict Everglades tree island, associated with the Archaic and Glades cultures of the area. The human remains are believed to be from the Glades period (circa 500 B.C. to A.D. 1500). The remains of these two individuals are 28 bone and tooth fragments. No known

individuals were identified. No associated funerary objects are present.

In March 2005, human remains representing a minimum of one individual were removed from site 8DU276, in Duval County, FL. Archeological site 8DU276 is described as a deep black earth midden with material dating from several periods, dominated by the pre-European contact Native American St. Johns II culture of the area (circa A.D. 900 to 1250). The area where the human remains were found may be a remnant burial mound or cemetery. The remains of this individual were transferred by the consulting archeologist to the Florida Department of State/Division of Historical Resources for identification pending reburial. Additional remains were located in the same area during subsequent investigation by another archeological consultant, but left in place. No known individual was identified. No associated funerary objects are present.

In July 2008, human remains representing a minimum of two individuals were removed from site 8SM186, in Sumter County, FL. Archeological site 8SM186 is described as having both pre-European contact Native American Middle Archaic and Weeden Island cultural deposits (circa A.D. 200 to 900). The remains were transferred to the Florida Department of State/Division of Historical Resources by the Sumter County Sheriff's Office and the district medical examiner. The remains of these individuals are 20 bone and tooth fragments. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Florida Department of State/Division of Historical Resources

Officials of the Florida Department of State/Division of Historical Resources have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of six individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains were removed is the aboriginal land of the Miccosukee Tribe of Indians of Florida, Seminole Nation of Oklahoma, and the Seminole Tribe of Florida.

- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to the Miccosukee Tribe of Indians of Florida.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Ryan J. Wheeler, State Archaeologist, Florida Department of State/Division of Historical Resources, 1001 de Soto Park Dr., Tallahassee, FL 32301, telephone (850) 245-6301, before July 21, 2011. Disposition of the human remains to the Miccosukee Tribe of Indians of Florida may proceed after that date if no additional requestors come forward.

The Florida Department of State/Division of Historical Resources is responsible for notifying the Miccosukee Tribe of Indians of Florida; Muscogee (Creek) Nation, Oklahoma; Poarch Band of Creek Indians of Alabama; Seminole Nation of Oklahoma; and the Seminole Tribe of Florida that this notice has been published.

Dated: June 15, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011-15440 Filed 6-20-11; 8:45 am]

BILLING CODE 43120-50-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Inventory Completion: Museum of Anthropology, University of Michigan, Ann Arbor, MI

AGENCY: National Park Service, Interior.
ACTION: Notice.

SUMMARY: The Museum of Anthropology, University of Michigan, has completed an inventory of human remains, in consultation with the appropriate Indian tribe, and has determined that there is a cultural affiliation between the human remains and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Museum of Anthropology, University of Michigan. Repatriation of the human remains to the tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural

affiliation with the human remains should contact the Museum of Anthropology, University of Michigan, at the address below by July 21, 2011.

ADDRESSES: Dr. Carla Sinopoli, NAGPRA Coordinator, Museum of Anthropology, University of Michigan, Ann Arbor, MI 48109-1079, telephone (734) 764-0485.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Museum of Anthropology, University of Michigan, Ann Arbor, MI. The human remains were removed from the Fort Rice area in North Dakota.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Museum of Anthropology, University of Michigan, professional staff in consultation with representatives of the Standing Rock Sioux Tribe of North & South Dakota.

History and Description of the Remains

At an unknown date, a human remain representing one individual was removed from most likely the Fort Rice area in North Dakota. The skull became part of a collection created by Corydon La Ford, MD (tenure 1854-1894), University of Michigan, Medical School, Department of Anatomy. The collection was created by Dr. La Ford during the late 19th century and it was later added to by unknown individuals until the early 20th century. The collection was used for anatomy teaching in the Medical School and no information exists as to how the crania were acquired. In 1996, the collection was transferred from the Medical School to the Museum of Anthropology. Written on this cranium is: "The skull of a Sioux Indian picked up on the plains near Fort Rice Dakota." No known individual was identified. No associated funerary objects are present.

Determinations Made by the Museum of Anthropology, University of Michigan

Officials of the Museum of Anthropology, University of Michigan, have determined that:

- Based on provenience location written on the cranium and dental morphology, the individual is determined to be of Native American ancestry.
- Based on the provenience, the individual is most likely culturally affiliated with the Standing Rock Sioux Tribe of North & South Dakota.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represents the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Standing Rock Sioux Tribe of North & South Dakota.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Carla Sinopoli, NAGPRA Coordinator, Museum of Anthropology, University of Michigan, Ann Arbor, MI 48109-1079, telephone (734) 764-0485, before July 21, 2011. Repatriation of the human remains to the Standing Rock Sioux Tribe of North & South Dakota may proceed after that date if no additional claimants come forward.

The Museum of Anthropology, University of Michigan, is responsible for notifying the Standing Rock Sioux Tribe of North & South Dakota that this notice has been published.

Dated: June 15, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011-15438 Filed 6-20-11; 8:45 am]

BILLING CODE 4312-50-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Inventory Completion: Western Michigan University, Anthropology Department, Kalamazoo, MI; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: In a Notice of Inventory Completion (75 FR 67998, Thursday, November 4, 2010), Little Traverse Bay Bands of Odawa Indians, Michigan, was listed as being culturally affiliated to human remains and associated funerary objects removed from the Gyftakis site (20MK51), Mackinac County, MI, however, since publication, additional consultation has resulted in a

determination that the human remains and associated funerary objects are culturally unidentifiable. Therefore, this Notice of Inventory Completion corrects the affiliation of the human remains and associated funerary objects that were removed from the Gyftakis site (20MK51), Mackinac County, MI, described in the previously published Notice of Inventory Completion to that of culturally unidentifiable Native American human remains and associated funerary objects.

Western Michigan University, Department of Anthropology has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the human remains and associated funerary objects and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Western Michigan University, Department of Anthropology. Disposition of the human remains and associated funerary objects to the Indian tribe stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Western Michigan University, Department of Anthropology at the address below by July 21, 2011.

ADDRESSES: LouAnn Wurst, Department of Anthropology, Western Michigan University, 1005 Moore Hall, Kalamazoo, MI 49008, telephone (269) 387-2753.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of Western Michigan University, Department of Anthropology, Kalamazoo, MI. The human remains and associated funerary objects were removed from Mackinac County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not

responsible for the determinations in this notice

Consultation

A detailed assessment of the human remains was made by Western Michigan University, Department of Anthropology professional staff in consultation with representatives of the Bay Mills Indian Community, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; and the Saginaw Chippewa Indian Tribe of Michigan (hereinafter referred to as "The Tribes"). The Tribes do not object to the disposition of the human remains and associated funerary objects described in this notice to the Little Traverse Bay Bands of Odawa Indians, Michigan.

History and Description of the Remains

In 1973, human remains representing a minimum of eight individuals were removed from the Gyftakis site (20MK51), St. Ignace, Moran Township, Mackinac County, MI, during an archeological excavation directed by Dr. James Fitting. Middle Woodland period ceramic sherds were found during test excavations for the St. Ignace Archaeological Survey Project, which prompted further archeological research. The burials were found to be in good condition. The human remains were transferred to Western Michigan University for curation and further analysis by Dr. Robert Sundick, a physical anthropologist in the Anthropology Department at Western Michigan University. No known individuals were identified. The 20 associated funerary objects are 8 black bear scapula and fragments, 1 black bear atlas, 1 black bear proximal femur head, 1 large bird long bone shaft, 1 possible black bear phalanx, 1 possible crane carpometacarpus, 1 raptor carpometacarpus, 1 possible small bird long bone, 1 unidentified non-human cranium fragment, 2 bird or small mammal long bones, and 2 probable bird phalanges.

Native American ancestry was determined based on skeletal and dental morphology, as well as the temporal association of the Gyftakis Site to the Middle Woodland period (A.D. 170). Radiocarbon dating of a sample from an associated hearth and AMS date of ceramic pot residue, as well as seriation of the pottery and lithic tools discovered at the Gyftakis site which were not associated funerary objects, are all indicative of the Middle Woodland period and are clearly of pre-Contact/European manufacturing.

Determinations Made by Western Michigan University, Department of Anthropology

Officials of Western Michigan University, Department of Anthropology, have determined that:

- Based on skeletal and dental morphology, in addition to radiocarbon and AMS dating, and other artifacts which all demonstrate a Middle Woodland temporal association, the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and associated funerary objects and any present-day Indian tribe.
- Multiple lines of evidence, such as the Treaty of Saginaw 1819 (also known as the Treaty with the Chippewa of 1819), continued occupation of the area, and oral tradition, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of The Tribes.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 20 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to the Little Traverse Bay Bands of Odawa Indians, Michigan.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact LouAnn Wurst, Department of Anthropology, Western Michigan University, 1005 Moore Hall, Kalamazoo, MI 49008, telephone (269) 387-2753, before July 21, 2011. Disposition of the human remains and associated funerary objects to the Little Traverse Bay Bands of Odawa Indians, Michigan, may proceed after that date if no additional requestors come forward.

Western Michigan University, Department of Anthropology, is responsible for notifying The Tribes that this notice has been published.

Dated: June 15, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011-15436 Filed 6-20-11; 8:45 am]

BILLING CODE 4312-50-P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253-665]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Reclamation, Pacific Northwest Region, Boise, ID

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, Bureau of Reclamation, Pacific Northwest Region has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribe, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Bureau of Reclamation, Pacific Northwest Region. Repatriation of the human remains and associated funerary objects to the Indian tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the Bureau of Reclamation, Pacific Northwest Region at the address below by July 21, 2011.

ADDRESSES: Dr. Sean Hess, Archeologist, Grand Coulee Power Office, Bureau of Reclamation, PO Box 620, Grand Coulee, WA 99133, telephone (509) 633-9233.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of the Interior, Bureau of Reclamation, Pacific Northwest Region, Boise, ID, and in the physical custody of Central Washington University, Ellensburg, WA. The human remains and associated funerary objects were removed from lands within the boundaries of the Colville Indian Reservation, Okanogan County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by a Central Washington University physical anthropologist, under contract to the Bureau of Reclamation. The assessment included research to find the current locations of the human remains and associated funerary objects from 45OK7, so they could be returned to the Bureau of Reclamation's control and included in the inventory and repatriation. Consultation by Bureau of Reclamation, Pacific Northwest Region was done with the Confederated Tribes of the Colville Reservation, Washington.

History and Description of the Remains

In 1950, human remains representing a minimum of five individuals were recovered from archeological site 45OK7, on the east bank of the Columbia River, below the Grand Coulee Dam, in Okanogan County, WA, during archeological investigations conducted by the U.S. Army Corps of Engineers in association with construction of Chief Joseph Dam. The site is on Federal lands under the Bureau of Reclamation's jurisdiction that are within the boundaries of the Colville Indian Reservation. The archeological site consisted of three house pits and an undocumented number of grave pits, which had been previously disturbed by looters. The recovered archeological materials, including the human remains and associated funerary objects, were sent to the Washington State Museum, Seattle, WA (now the Thomas Burke Washington State Memorial Museum). No known individuals were identified. The 12 associated funerary objects are 1 lot of beads strung on twine, 1 mammal bone fragment, 1 individual bone bead, 2 mussel or clam shell beads, 1 fragment of rolled copper, 2 lots of items consisting of loose dentalia beads or fragments, 2 lots of dentalia beads strung on bark twine, 1 lot of fragments of rolled copper beads strung on bark twine, and 1 bone harpoon point.

During the years since recovery, the human remains from 45OK7 have been transferred between several museums and institutions, often with little

documentation of the materials included in the transfer. In some instances, skeletal elements of the same individual were separated and sent to multiple locations. Between 1957 and sometime prior to 1966, the Burke Museum transferred the remains of two individuals from Pit 5 (identified as 5A and 5B) to the Western Washington University, Bellingham, WA. These individuals stayed at Western Washington University until October 2009, when they were transferred to Central Washington University as part of the NAGPRA inventory effort. In February 1974, the Burke Museum transferred four individuals, recovered from Pits 4, 5, and 6 (identified as 4, 5A, 5B, and 6), to Central Washington University. These four individuals have remained at Central Washington University. In March 1974, the Burke Museum transferred all remaining skeletal elements (4, 5A, 5B, and 6) to Seattle University, Seattle, WA. In January 1990, Seattle University transferred two skeletal elements from individual 5A to the Confederated Tribes of the Colville Reservation, Washington, where they were placed in the Colville Tribal Repository, in Nespelem, WA. In March 2006, the Confederated Tribes of the Colville Reservation, Washington, transferred temporary custody of this individual to Central Washington University in order to supplement the inventory of that individual's remains. Upon completion of the inventory, the two elements from individual 5A were returned to the Confederated Tribes of the Colville Reservation (they are presently at the Colville Tribal Repository). In December 1991, Seattle University transferred the other elements of individual 5A, as well as the skeletal elements they held from individuals 4, 5B, and 6, to an organization called Daybreak Star Indian Cultural Center. In June 1993, on behalf of Seattle University, the Daybreak Star Indian Cultural Center transferred the human remains in their possession back to the Burke Museum. In October 2006, the Burke Museum transferred all remains in their possession (*i.e.*, the remains returned to them by Daybreak Star Indian Cultural Center) to Central Washington University in order to facilitate the Bureau of Reclamation's NAGPRA inventory effort. With the exception of the two elements from individual 5A that are at the Colville Tribal Repository, all known skeletal elements from the individuals recovered from 45OK7, as well as all the associated funerary objects recovered in 1950, are now at Central Washington University.

No physical description of the human remains was prepared at the time of recovery. Between 1950 and 1957, Roger Heglar, a University of Washington graduate student, analyzed the burials from 45OK7. That inventory documented the partial remains of four individuals in collections; the field records indicated the excavators, in 1950, had believed the remains of three individuals were recovered. A 1966 inventory by the Burke Museum also identified four individuals. However, the current physical inventory completed by Central Washington University determined that the collection of skeletal elements previously identified as individual 5A actually included skeletal elements of two individuals. In conclusion, elements from five individuals (4, 5A, 5B individual 1, 5B individual 2, and 6) recovered from site 45OK7 are presently in collections.

Osteological evidence documented by the physical anthropologist, the archeological association of the materials with a prehistoric site, and the kinds of associated funerary objects recovered, indicate that the human remains described above are Native American. The geographic location of the site within the Plateau Culture Area, tribal oral tradition, and anthropological and historical research all indicate that site 45OK7 lies within an area occupied by the San Poil and Nespelem tribes or bands, who are members of and legally represented by the Confederated Tribes of the Colville Reservation, Washington. Moreover, site 45OK7 is situated within the exterior boundaries of the Colville Indian Reservation, WA.

Determinations Made by the Bureau of Reclamation, Pacific Northwest Region

Officials of the Bureau of Reclamation, Pacific Northwest Region have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 12 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Colville Reservation, Washington.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Sean Hess, Archeologist, Grand Coulee Power Office, Bureau of Reclamation, PO Box 620, Grand Coulee, WA 99133, telephone (509) 633-9233, before July 21, 2011. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Colville Reservation, Washington, may proceed after that date if no additional claimants come forward.

The Bureau of Reclamation, Pacific Northwest Region is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington, that this notice has been published.

Dated: June 15, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011-15433 Filed 6-20-11; 8:45 am]

BILLING CODE 4312-50-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-778]

In the Matter of Certain Equipment for Communications Networks, Including Switches, Routers, Gateways, Bridges, Wireless Access Points, Cable Modems, IP Phones, and Products Containing Same; Notice of Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 17, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of MOSAID Technologies Inc. of Canada. Letters supplementing the complaint were filed on June 6 and June 7, 2011. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain equipment for communications networks, including switches, routers, gateways, bridges, wireless access points, cable modems, IP phones, and products containing same by reason of infringement of certain claims of U.S. Patent No. 7,035,280 ("the '280 patent");

U.S. Patent No. 7,292,600 (“the ‘600 patent”); U.S. Patent No. 7,830,858 (“the ‘858 patent”); U.S. Patent No. 6,842,459 (“the ‘459 patent”); U.S. Patent No. 7,633,966 (“the ‘966 patent”); and U.S. Patent No. 5,841,360 (“the ‘360 patent”). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 15, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain equipment for communications networks, including switches, routers, gateways, bridges, wireless access points, cable modems, IP phones, and products containing same that infringe one or more of claims

1, 5, 9, 11–13, 15, 18, 19, 23, 27, 30, 31, 36, 43, 45, 46, and 51 of the ‘280 patent; claims 12, 13, 17, 18, 44–46, 50–53, 57, 58, 83, and 139 of the ‘600 patent; claims 34–39, 111–114, 118, 120–131 of the ‘858 patent; claims 15–17 and 20–25 of the ‘459 patent; claims 1, 3, 5, 6, and 9 of the ‘966 patent; and claims 1, 6, and 9 of the ‘360 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: MOSAID Technologies Inc., 11 Hines Road, Suite 203, Ottawa, ON K2K 2X1, Canada.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Cisco Systems, Inc., 170 West Tasman Drive, San Jose, CA 95134-1706;
Cisco Consumer Products LLC, 120 Theory Drive, Irvine, CA 92617.
Cisco Systems International B.V., Harrlerbergweg 13–19, Amsterdam, 1101 CH, Netherlands.

Scientific Atlanta LLC, 5030 Sugarloaf Parkway, Lawrenceville, GA 30044.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission’s Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to

the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 16, 2011.

James R. Holbein.

Secretary to the Commission.

[FR Doc. 2011-15365 Filed 6-20-11; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110-NEW]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 60-day Notice of Information Collection Under Review: Establishment and distribution of National Fingerprint Examiners Questionnaire.

The Department of Justice, Federal Bureau of Investigation, Training and Records Testimony Team will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until August 22, 2011.

This process is conducted in accordance with 5 CFR 1320.10.

All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to David R. Cotton, Training Administrator, Federal Bureau of Investigation, Training and Records Testimony Team, Criminal Justice Information Services Division, Clarksburg, West Virginia 26306; facsimile (304) 625-2337.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. 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 of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Identify agencies that provide fingerprint comparisons.

(2) *The title of the form/collection:* National Fingerprint Examiners Questionnaire.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* N/A.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal, state, and local government law enforcement agencies charged with the responsibility of fingerprint comparison.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Sampling of one hundred and fifty respondents with a time burden of less than ten minutes per phone call.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 1,500 burden hours associated with this information collection (150 agencies × 10 minutes).

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street, NE., Room 2E-808, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 2011-15336 Filed 6-20-11; 8:45 am]

BILLING CODE 4410-02-P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606-8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606-8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. **DATE:** July 11, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 315.

PROGRAM: This meeting will review applications for History and Politics in Awards for Faculty Program, submitted to the Division of Research Programs at the April 14, 2011 deadline.

2. **DATE:** July 12, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 315.

PROGRAM: This meeting will review applications for British Literature I in Fellowships Program, submitted to the Division of Research Programs at the May 3, 2011 deadline.

3. **DATE:** July 12, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 415.

PROGRAM: This meeting will review applications for British Literature II in Fellowships Program, submitted to the Division of Research Programs at the May 3, 2011 deadline.

4. **DATE:** July 12, 2011.

TIME: 9:00 a.m. to 5 p.m.

LOCATION: Room 421.

PROGRAM: This meeting will review applications for Art and Anthropology, submitted to the Office of Challenge Grants at the May 4, 2011 deadline.

5. **DATE:** July 18, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 315.

PROGRAM: This meeting will review applications for European and Comparative Literature in Fellowships Program, submitted to the Division of Research Programs at the May 3, 2011 deadline.

6. **DATE:** July 18, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 415.

PROGRAM: This meeting will review applications for Literary Theory and Film in Fellowships Program, submitted to the Division of Research Programs at the May 3, 2011 deadline.

7. **DATE:** July 19, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 315.

PROGRAM: This meeting will review applications for Social Science and Ethnic Studies in Awards for Faculty Program, submitted to the Division of Research Programs at the April 14, 2011 deadline.

8. **DATE:** July 19, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 415.

PROGRAM: This meeting will review applications for Literature, Philosophy, and the Arts in Awards for Faculty Program, submitted to the Division of Research Programs at the April 14, 2011 deadline.

9. **DATE:** July 19, 2011.

TIME: 9:00 a.m. to 5 p.m.

LOCATION: Room 421.

PROGRAM: This meeting will review applications for Colleges & Universities I, submitted to the Office of Challenge Grants at the May 4, 2011 deadline.

10. **DATE:** July 20, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 315.

PROGRAM: This meeting will review applications for Musicology in Fellowships Program, submitted to the Division of Research Programs at the May 3, 2011 deadline.

11. **DATE:** July 20, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 415.

PROGRAM: This meeting will review applications for Art History I in Fellowships Program, submitted to the Division of Research Programs at the May 3, 2011 deadline.

12. **DATE:** July 21, 2011.

TIME: 9:00 a.m. to 5 p.m.

LOCATION: Room 421.

PROGRAM: This meeting will review applications for Research, submitted to the

Office of Challenge Grants at the May 4, 2011 deadline.

13. *DATE:* July 21, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 315.

PROGRAM: This meeting will review applications for Modern European History I in Fellowships Program, submitted to the Division of Research Programs at the May 3, 2011 deadline.

14. *DATE:* July 25, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 315.

PROGRAM: This meeting will review applications for East Asian Studies in Fellowships Program, submitted to the Division of Research Programs at the May 3, 2011 deadline.

15. *DATE:* July 25, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 415.

PROGRAM: This meeting will review applications for Anthropology in Fellowships Program, submitted to the Division of Research Programs at the May 3, 2011 deadline.

16. *DATE:* July 26, 2011.

TIME: 9 a.m. to 5 p.m.

LOCATION: Room 421.

PROGRAM: This meeting will review applications for Public Libraries and Public Programming, submitted to the Office of Challenge Grants at the May 4, 2011 deadline.

17. *DATE:* July 26, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 315.

PROGRAM: This meeting will review applications for Religious Studies I in Fellowships Program, submitted to the Division of Research Programs at the May 3, 2011 deadline.

18. *DATE:* July 26, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 415.

PROGRAM: This meeting will review applications for American History II in Fellowships Program, submitted to the Division of Research Programs at the May 3, 2011 deadline.

19. *DATE:* July 27, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 315.

PROGRAM: This meeting will review applications for Latin American Studies I in Fellowships Program, submitted to the Division of Research Programs at the May 3, 2011 deadline.

20. *DATE:* July 27, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 415.

PROGRAM: This meeting will review applications for Latin American Studies II in Fellowships Program, submitted to the Division of Research Programs at the May 3, 2011 deadline.

21. *DATE:* July 28, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 315.

PROGRAM: This meeting will review applications for Philosophy I in Fellowships Program, submitted to the Division of Research Programs at the May 3, 2011 deadline.

22. *DATE:* July 28, 2011.

TIME: 8:30 a.m. to 5 p.m.

LOCATION: Room 415.

PROGRAM: This meeting will review applications for Philosophy II in Fellowships Program, submitted to the Division of Research Programs at the May 3, 2011 deadline.

23. *DATE:* July 28, 2011.

TIME: 9 a.m. to 5 p.m.

LOCATION: Room 421.

PROGRAM: This meeting will review applications for History I, submitted to the Office of Challenge Grants at the May 4, 2011 deadline.

Michael P. McDonald,

Advisory Committee Management Officer.

[FR Doc. 2011-15386 Filed 6-20-11; 8:45 am]

BILLING CODE 7536-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2008-0473; Docket No.: 030-10346; License No.: 50-16084-01; EA-10-231]

In the Matter of Alaska Industrial X-Ray, Inc., Anchorage, AK; Confirmatory Order Modifying License; Effective Immediately

I

Alaska Industrial X-Ray, Inc. (AIX or Licensee) is the holder of Materials License 50-16084-01 issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30-36, 39, 40 and 70 and last amended on November 2, 2007, which expired on March 31, 2011. The license remains in effect while being reviewed by NRC licensing staff because AIX filed a timely licensee renewal application dated March 3, 2011. The license authorizes AIX to possess and use sealed radioactive sources in conducting industrial radiography activities in accordance with the conditions specified therein.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on April 19, 2011, in Seattle, Washington.

II

On January 29, 2010, the NRC Office of Investigations (OI) began an investigation (OI Case number OI-4-2010-023) to determine if AIX willfully failed to comply with portions of NRC Order Modifying License (EA-08-196). NRC Order Modifying License (EA-08-196) included requirements that AIX obtain an independent auditor to perform field audits of radiographic operations and that an independent consultant be hired by AIX to evaluate the effectiveness of the radiation safety

and compliance programs. The OI investigation concluded that (1) from July 2009 through March 2010, AIX failed to ensure that unannounced field audits were conducted; (2) monthly reports of audit activities were not transmitted to the NRC during this same time period; and (3) an independent consultant failed to commence an assessment of the AIX radiation safety program, as required by NRC Order Modifying License, EA-08-196 (Order). The results of the OI investigation and NRC inspection were discussed with AIX during a telephonic exit on February 3, 2011, and were documented in NRC Inspection Report 030-10346/2009-001 and Investigation Report 4-2010-023, dated March 3, 2011.

On April 19, 2011, the NRC and Licensee representatives met in an ADR session in Seattle, Washington, mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement that resolves any differences regarding the dispute. This confirmatory order is issued pursuant to the agreement reached during the ADR process.

III

In response to the NRC's offer, the Licensee requested use of the NRC's ADR process to resolve differences it had with the NRC. During that ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

Pursuant to the Nuclear Regulatory Commission Office of Enforcement's Alternative Dispute Resolution program (ADR), the following are the terms and conditions agreed upon in principle by Alaska Industrial X-Ray, Inc. (AIX) and the Nuclear Regulatory Commission (NRC) relating to the NRC's letter dated March 3, 2011 (EA-10-231).

Whereas, the NRC has concluded that willful violations were committed by AIX associated with failure to ensure that an independent contractor performed field audits and that an approved independent consultant began an evaluation of the effectiveness of the AIX radiation safety program as required by Conditions of NRC Order Modifying License (EA-08-196).

Whereas, the NRC considers willful actions to be a significant concern to the regulatory program and the NRC is interested in obtaining comprehensive corrective actions from AIX that would deter future willful violations and

noncompliance with regulatory requirements.

Whereas, the NRC recognizes that AIX restored compliance with the license requirements, once the NRC brought the findings to AIX's attention; and AIX restored full compliance with the NRC Order Modifying License (EA-08-196) by October 28, 2010.

Whereas, the NRC recognizes that, based on the NRC's thorough inspection conducted between August and September 2010, AIX had improved its compliance with NRC regulations in that there were no findings involving the conduct of radiography; and that the NRC's findings were consistent with the auditor's findings that had been conducted prior to August 24, 2010;

Therefore, the parties agree to the following terms and conditions:

1. Within 60 days of the date of the ADR Confirmatory Order, AIX will contract with a person to provide training to all AIX employees engaged in licensed activities (up to and including the company president) on what is meant by willfulness and the potential enforcement sanctions that the NRC may take against employees who engage in deliberate misconduct. The training will also include instruction on what is meant by compliance to NRC orders and company procedures that provide direction to AIX personnel. The goal of the training is to deter future willful violations by ensuring AIX employees understand the importance upon which the NRC places on willful violations and compliance. The training will be completed within 120 days of the ADR Confirmatory Order.

(a) The training will include the elements of willfulness discussed in the NRC Enforcement Manual (Chapter 6) and will include some examples of enforcement actions taken against individuals (which are publicly available on the NRC's Web site).

(b) AIX will submit for NRC approval at least 30 days prior to the training, the résumé of the contractor who will be conducting the training.

(c) The training will include the willful issues discussed in the NRC's "Notice of Violation and Proposed Imposition of Civil Penalty—\$20,800 and Order Modifying License" issued to AIX on August 20, 2008, and the willful issues discussed in NRC Inspection Report 030-10346/2009-001 dated March 3, 2011.

(d) At least 14 days prior to the training, AIX will provide the NRC with an outline of the topics to be covered during this training session.

2. AIX will use an independent auditor to perform the annual review of its radiation safety and compliance

program. The auditor will utilize the AIX RSO to assist during the review of the radiation safety program. The audits will use the guidance contained in NUREG 1556 (Volume 2), and include an audit of adherence to applicable security requirements by AIX. The first annual program review will be completed by February 15, 2012, for the calendar year 2011. The final annual program review will be completed by February 15, 2013, for the calendar year 2012.

(a) AIX will submit within 60 days of the date of this order the name of the independent auditor planned to perform the annual review.

(b) If AIX decides to use an auditor which the NRC has not previously approved, AIX must submit the auditor's résumé to the NRC for approval prior to using the individual.

(c) The auditor will submit their findings to both AIX and the NRC simultaneously. Within 30 days after receiving the auditor's findings, AIX will submit to the NRC its response to the audit findings, including any corrective actions needed to address the auditor's findings.

3. From the date of the ADR Confirmatory Order until June 30, 2013, NRC management and AIX will conduct conference calls approximately six-month intervals to review audit and/or inspection results.

4. From the date of the ADR Confirmatory Order until June 30, 2013, the president of AIX or RSO shall perform quarterly audits of AIX radiographers as they conduct radiography. To the maximum extent possible, the audits shall include observations such that the crew cannot detect his presence. During these audits, the president of AIX or RSO must, to the extent possible, prevent violations from occurring or continuing as he observes the radiography crews, even in situations where the crew has not detected his presence prior to the violation. These audits must be separate and apart from any required audits performed for compliance with 10 CFR 34.43(e). Records shall be maintained documenting these audits and the results of the audits.

5. A Civil Penalty in the amount of \$1,000 will be assessed by the NRC.

6. This ADR confirmatory order will supersede the NRC Order Modifying License (EA 08-196).

On June 1, 2011, the Licensee consented to issuing this Order with the commitments, as described in Section V below. The Licensee further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since the Licensee has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that the Licensee's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and Licensee's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 20, 34, and 10 CFR 150.20, *It Is Hereby Ordered, Effective Immediately, That License 50-16084-01 Is Modified As Follows:*

1. Within 60 days of the date of the ADR Confirmatory Order, AIX will contract with a person to provide training to all AIX employees engaged in licensed activities (up to and including the company president) on what is meant by willfulness and the potential enforcement sanctions that the NRC may take against employees who engage in deliberate misconduct. The training will also include instruction on what is meant by compliance to NRC orders and company procedures that provide direction to AIX personnel. The goal of the training is to deter future willful violations by ensuring AIX employees understand the importance upon which the NRC places on willful violations and compliance. The training will be completed within 120 days of the ADR Confirmatory Order.

(a) The training will include the elements of willfulness discussed in the NRC Enforcement Manual (chapter 6) and will include some examples of enforcement actions taken against individuals (which are publicly available on the NRC's Web site).

(b) AIX will submit for NRC approval at least 30 days prior to the training, the résumé of the contractor who will be conducting the training.

(c) The training will include the willful issues discussed in the NRC's "Notice of Violation and Proposed Imposition of Civil Penalty—\$20,800 and Order Modifying License" issued to AIX on August 20, 2008, and the willful

issues discussed in NRC Inspection Report 030-10346/2009-001 dated March 3, 2011.

(d) At least 14 days prior to the training, AIX will provide the NRC with an outline of the topics to be covered during this training session.

2. AIX will use an independent auditor to perform the annual review of its radiation safety and compliance program. The auditor will utilize the AIX RSO to assist during the review of the radiation safety program. The audits will use the guidance contained in NUREG 1556 (Volume 2), and include an audit of adherence to applicable security requirements by AIX. The first annual program review will be completed by February 15, 2012, for the calendar year 2011. The final annual program review will be completed by February 15, 2013, for the calendar year 2012.

(a) AIX to submit within 60 days of the date of this order the name of the independent auditor planned to perform the annual review.

(b) If AIX decides to use an auditor which the NRC has not previously approved, AIX must submit the auditor's résumé to the NRC for approval prior to using the individual.

(c) The auditor will submit their findings to both AIX and the NRC simultaneously. Within 30 days after receiving the auditor's findings, AIX will submit to the NRC its response to the audit findings, including any corrective actions needed to address the auditor's findings.

3. From the date of the ADR Confirmatory Order until June 30, 2013, NRC management and AIX will conduct conference calls at approximately six-month intervals to review audit and/or inspection results.

4. From the date of the ADR Confirmatory Order until June 30, 2013, the president of AIX or RSO shall perform quarterly audits of AIX radiographers as they conduct radiography. To the maximum extent possible, the audits shall include observations such that the crew cannot detect his presence. During these audits, the president of AIX or RSO must, to the extent possible, prevent violations from occurring or continuing as he observes the radiography crews, even in situations where the crew has not detected his presence prior to the violation. These audits must be separate and apart from any required audits performed for compliance with 10 CFR 34.43(e). Records shall be maintained documenting these audits and the results of the audits.

A Civil Penalty in the amount of \$1,000 will be assessed by the NRC.

This ADR confirmatory order will supersede the NRC Order Modifying License (EA-08-196).

The Regional Administrator, Region IV, or designee, may, in writing, relax or rescind any of the above conditions upon demonstration by the licensee of good cause.

VI

Any person adversely affected by this Confirmatory Order, other than Licensee, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and include a statement of good cause for the extension.

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 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at 301-415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital identification (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.

If a person (other than Licensee) requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A Request for Hearing Shall Not Stay the Immediate Effectiveness of This Order.

Dated this 7th day of June 2011.

For the Nuclear Regulatory Commission.

Elmo E. Collins,

Regional Administrator.

[FR Doc. 2011-15394 Filed 6-20-11; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Radiation Protection and Nuclear Materials

Notice of Meeting

The ACRS Subcommittee on Radiation Protection and Nuclear Materials will hold a meeting on June 20, 2011, Room T-2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Monday, June 20, 2011—1 p.m. Until 5 p.m.

The Subcommittee will review the staff's development of the Fuel Cycle Oversight Process (FCOP). The Subcommittee will hear presentations by and hold discussions with the NRC

staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone 301-415-7366 or E-mail: Derek.Widmayer@nrc.gov) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038-65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/acrs>. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Ms. Jessie Delgado (Telephone 301-415-7360) to be escorted to the meeting room.

Dated: June 9, 2011.

Yoira Diaz-Sanabria,

Acting Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011-15389 Filed 6-20-11; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[NRC-2011-0006]

Sunshine Federal Register Notice**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.**DATES:** Weeks of June 20, 27, July 4, 11, 18, 25, 2011.**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.**STATUS:** Public and Closed.**Week of June 20, 2011**

There are no meetings scheduled for the week of June 20, 2011.

Week of June 27, 2011—Tentative

There are no meetings scheduled for the week of June 27, 2011.

Week of July 4, 2011—Tentative

There are no meetings scheduled for the week of July 4, 2011.

Week of July 11, 2011—Tentative*Tuesday, July 12, 2011*9:30 a.m. Briefing on the NRC Actions for Addressing the Integrated Regulatory Review Service (IRRS) Report (Public Meeting) (*Contact:* Jon Hopkins, 301-415-3027).This meeting will be webcast live at the Web address—<http://www.nrc.gov>.**Week of July 18, 2011—Tentative***Tuesday, July 19, 2011*9:30 a.m. Briefing on the Task Force Review of NRC Processes and Regulations Following Events in Japan (Public Meeting) (*Contact:* Nathan Sanfilippo, 301-415-3951).This meeting will be webcast live at the Web address—<http://www.nrc.gov>.**Week of July 25, 2011—Tentative***Thursday, July 28, 2011*9 a.m. Briefing on Severe Accidents and Options for Proceeding with Level 3 Probabilistic Risk Assessment Activities (Public Meeting) (*Contact:* Daniel Hudson, 301-251-7919).This meeting will be webcast live at the Web address—<http://www.nrc.gov>.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415-1292.

Contact person for more information: Rochelle Bavol, (301) 415-1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/public-involve/public-meetings/schedule.html>.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301-415-6200, TDD: 301-415-2100, or by e-mail at william.dosch@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969), or send an e-mail to darlene.wright@nrc.gov.

June 16, 2011.

Rochelle C. Bavol,*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2011-15585 Filed 6-17-11; 2:00 pm]

BILLING CODE 7590-01-P**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-64677; File No. SR-Phlx-2011-80]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing of Opening Orders

June 15, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that, on June 2, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to¹ 15 U.S.C. 78s(b)(1).² 17 CFR 240.19b-4.

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 Rule 1017, Openings in Options, to reflect a system change that describes the price at which the Exchange will route opening orders to away markets in certain circumstances. Specifically, the Exchange will route orders on the open to away markets at prices other than the Exchange's opening price when such order's limit price is marketable against an away market but not marketable against the Exchange's opening price.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, at the principal office of the Exchange, and at the Commission's Public Reference Room.**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**1. Purpose**The purpose of the proposed rule change is to reflect a change to the PHLX XL[®] automated options trading system³ under which opening orders that are submitted to the Exchange with a limit price that is better than the Exchange's opening price would be routed to away markets at the better-priced limit order's limit price. In such a circumstance, the better-priced limit order could not be executed on the³ This proposal refers to "PHLX XL" as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as "Phlx XL II." See Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR-Phlx-2009-32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from "Phlx XL II" to "PHLX XL" for branding purposes.

Exchange, but may be executable on an away market.

Current Rule and System Functionality

Currently, Exchange Rule 1017 describes a variety of situations under which the PHLX XL system routes opening orders to away markets when there is remaining interest on the Exchange that cannot be executed at the Exchange's opening price.⁴ Whether and under what various circumstances an opening limit order is to be routed are described in detail in Rule 1017.⁵

The PHLX XL system calculates the opening price based upon the price at which the greatest number of contracts can be executed.⁶ If there are remaining contracts that are marketable at the Away Best Bid or Offer ("ABBO") after the execution at the Exchange's opening price, such remaining contracts are routed to the ABBO market(s) at a price that is equal to the Exchange's opening price.⁷ If, however, the remaining contracts have a limit price that is better than the Exchange's opening price, and the PHLX XL system routes them to the ABBO market(s) at the Exchange's opening price, the result could be an execution on the ABBO market(s) at a price that is inferior to the limit price of the routed order.

Example

The following example illustrates the issue. Assume that the opening scenario is:

The ABBO is 1.00 (10) × 1.05 (10);
Opening order to buy 10 contracts at 1.05;

⁴ The PHLX XL system calculates the Exchange's opening price as follows: If there are no opening quotes or orders that lock or cross each other, the system will open by disseminating the Exchange's best bid and offer among quotes and orders that exist in the Phlx XL II system at that time (because if no quotes or orders lock/cross each other, nothing matches and there is no trade).

If there are opening quotes or orders that lock or cross each other, the Phlx XL II system will take the highest bid and the lowest offer among quotations received that have a bid/ask differential that is compliant with Rule 1014(c)(i)(A)(1)(a) ("valid width quotes"), to determine the highest quote bid and lowest quote offer. To calculate the opening price, the Phlx XL II system will take into consideration all valid width Phlx quotes, sweeps (defined below) and orders together with other exchanges' markets for the series and identify the price at which the maximum number of contracts can trade. If that price is within the highest quote bid and lowest quote offer and leaves no imbalance, the Exchange will open at that price, executing marketable trading interest, as long as the opening price includes only Phlx interest.

See Exchange Rules 1017(l)(i) and (ii).

⁵ For a thorough description of the PHLX XL system's functionality in routing opening orders, see Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 June 3, 2009) (SR-Phlx-2009-32).

⁶ See *supra* note 4.

⁷ See Exchange Rule 1017(l)(ii)(C)(2).

Opening order to buy 10 contracts at 1.06;

Opening order to buy 10 contracts at 1.06, with instructions "do not route";
Opening order to sell 20 contracts at 1.06 with instructions "do not route." In this example, the Exchange's opening price is 1.06, because that is the price at which the greatest number of contracts will trade. The PHLX XL system will route 10 contracts to the ABBO to buy at 1.06 (with an expected execution price of 1.05) and trade 10 contracts on the Exchange at 1.06 (matching the "do not route" buy order for 10 contracts against the "do not route" order to sell 20 contracts at 1.06, leaving 10 remaining "do not route" contracts to sell at 1.06 on the Exchange). The opening order to buy 10 contracts at 1.05 will remain on the Exchange's order book as will the remaining 10 contracts of the "do not route" sell order at 1.06. The order to buy 10 contracts at 1.05 was marketable against the ABBO but could not be executed as part of the opening process because the PHLX XL system currently only routes to the ABBO market(s) at the Exchange's opening price, which is 1.06, and which is inferior to the 1.05 limit price.

The Proposal

In order to address the issue described in the above example, the Exchange proposes to amend the rule and change the system to provide that the PHLX XL system will not only route to the ABBO market(s) at a price that is equal to the Exchange's opening price, but also will route to the ABBO market(s) at a price that is *better than* the Exchange's opening price. With this system change, the PHLX XL system would route the order to buy 10 contracts at 1.05 to the ABBO market(s) and trade the other orders in their entirety at 1.06.

The PHLX XL system will determine to route contracts to the ABBO market(s) at a price that is equal to the Exchange's opening price when there is interest on the Exchange at that price, but not all of the contracts marketable at that price can be executed on the Exchange. Remaining contracts from the partially executed order will be routed to ABBO market(s) against which the order is marketable.

The PHLX XL system will determine to route contracts to the ABBO market(s) at a price that is better than the Exchange's opening price when such contracts are not marketable on the Exchange but are marketable against the ABBO market.

The Exchange believes that this solution to the opening routing issue described above ensures the routing of

marketable opening orders with a limit price that is better than the Exchange's opening price to ABBO markets. This enables the PHLX XL system to seek, and route opening orders to, the best away market(s) in the circumstance described above, all to the benefit of the investing public.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by adopting a rule and system change that affords quality executions on the opening at the best prices available, regardless of whether such prices are present on the Exchange or on the ABBO market(s).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)¹⁰ of the Act and Rule 19b-4(f)(6)¹¹ thereunder, the Exchange has designated this proposal as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

date of filing.¹² However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),¹³ which would make the rule change effective and operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the proposal to take effect immediately, which may result in better execution prices for investors at the opening. Accordingly, the Commission designates the proposed rule change as operative upon filing with the Commission.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–Phlx–2011–80 on the subject line.

¹² 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹³ 17 CFR 240.19b–4(f)(6)(iii).

¹⁴ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–80. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–80 and should be submitted on or before July 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–15372 Filed 6–20–11; 8:45 am]

BILLING CODE 8011–01–P

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 August 22, 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 Veronica Dymond, Public Affairs Specialist, Office of Communications, Small Business Administration, 409 3rd Street, 7th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Veronica Dymond, Office of Communications, 202–205–6746, veronica.dymond@sba.gov Curtis B. Rich, Management Analyst, 202–205–7030 curtis.rich@sba.gov.

SUPPLEMENTARY INFORMATION: This form is used to collect information from candidates for advisory councils. This form is needed to determine eligibility, potential conflict-of-interest and mailing data.

Title: “U.S. Small Business Advisory Committee Membership Information”.

Description of Respondents: To collect information for Candidates for Advisory Council.

Form Number: 898.

Annual Responses: 100.

Annual Burden: 100.

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 Cynthia Pitts, Director, Disaster Administrative Services, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Disaster Administrative Services, 202–205–7570, Cynthia.pitts@sba.gov, Curtis B. Rich, Management Analyst, 202–205–7030 curtis.rich@sba.gov.

SUPPLEMENTARY INFORMATION: The objective of the debt collection activities is to obtain immediate repayment or arrive at a satisfactory arrangement for future repayment of debts owed to the Government. SBA uses the financial information provided by the debtor on Form 770 in making a determination regarding the compromise of such debts and other liquidation proceedings including litigation by the Agency and/or the Department of Justice.

¹⁵ 17 CFR 200.30–3(a)(12).

Title: "Financial Statement of Debtor".

Description of Respondents: SBA Borrowers or guarantor's who request compromise.

Form Number: 770.
Annual Responses: 5,000.
Annual Burden: 2,500.

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 Louis Cupp, New Markets Policy Analyst, Office of Investment, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Louis Cupp, Office Investment, 202-619-0511, *Louis.cupp@sba.gov*, Curtis B. Rich, Management Analyst, 202-205-7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: SBA uses this information collection for proper oversight within the scope of the Small Business Act to assess NMVC Program applicants and participants.

Title: "New Market Venture Capital Program Application, Funding and Reporting".
Description of Respondents: Programs Applications and participants, SSBIC receiving grants under the NMVC program.
Form Number's: 2216, 2185, 2219, 2210, 468.1, 480.
Annual Responses: 1,151.
Annual Burden: 14,012.

FOR FURTHER INFORMATION CONTACT: Johnny Kitts, Chief, Fund Administration, Office of Investment, 202-205-6551, *Johnny.kitts@sba.gov*, Curtis B. Rich, Management Analyst, 202-205-7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: Applicants for SBA-guaranteed commitment must complete these forms as part of the application process. SBA uses the information to make informed and proper credit decisions and to establish the SBIC's eligibility for leverage and need for funds.

Title: "25-Model Corp. Resol. Or GP Certif. 33-Model Letter to Selling Agent, 34-Bank ID, 1065-Appl.Lic Assure. Of Compliance".
Description of Respondents: Application for SBA-guaranteed leverages.
Form Number: 23, 33, 34, 1065.
Annual Responses: 48.
Annual Burden: 43.

FOR FURTHER INFORMATION CONTACT: Gail Hepler, Chief, 7(a) Program Branch,

Office of Financial Assistance, 202-205-7530, *gail.hepler@sba.gov*, Curtis B. Rich, Management Analyst, 202-205-7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: The information on this form is provided by Lenders to indicate how, to whom and for what purpose Lender disbursed the loan proceeds. SBA relies on this information during the guaranty purchase review process to determine whether to honor the guaranty, in full or in part, or to deny liability.

Title: "Settlement Sheet".
Description of Respondents: Lenders requesting SBA to provide the Agency With breakdown of payments.
Form Number: 1050.
Annual Responses: 19,800.
Annual Burden: 4,950.

SUPPLEMENTARY INFORMATION: Lenders requesting SBA to purchase the guaranty portion of a loan are required to supply the Agency with a certified transcript of the loan account. This form is uniform and convenient means for lenders to report and certify loan accounts to purchase by SBA. The Agency uses the information to determine date of loan default and whether Lender disbursed and serviced the loan according to Loan Guaranty agreement.

Title: "Lender's Transcript of Account".
Description of Respondents: SBSA Borrowers to complete loan authorization.
Form Number: 1149.
Annual Responses: 3,600.
Annual Burden: 3,600.

Jacqueline White,
 Chief, Administrative Information Branch.
 [FR Doc. 2011-15334 Filed 6-20-11; 8:45 am]

BILLING CODE P

U.S. SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12626 and #12627]

New Jersey Disaster #NJ-00021

AGENCY: U.S. Small Business Administration.
ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of New Jersey dated 06/14/2011.

Incident: Severe Storms and Flooding.
Incident Period: 04/16/2011.
Effective Date: 06/14/2011.
Physical Loan Application Deadline Date: 08/15/2011.
Economic Injury (EIDL) Loan Application Deadline Date: 03/14/2012.

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 Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Gloucester.

Contiguous Counties:

New Jersey: Atlantic, Camden, Cumberland, Salem.

Delaware: New Castle.

Pennsylvania: Delaware, Philadelphia

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.563
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere ...	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12626 6 and for economic injury is 12627 0.

The States which received an EIDL Declaration # are New Jersey, Delaware, Pennsylvania.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

June 14, 2011.

Karen G. Mills,
 Administrator.

[FR Doc. 2011-15345 Filed 6-20-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12572 and #12573]

Tennessee Disaster Number TN-00053

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Tennessee (FEMA-1979-DR), dated 05/09/2011.

Incident: Severe Storms, Tornadoes, Straight-line, Winds, and Flooding.

Incident Period: 04/19/2011 through 06/07/2011.

Effective Date: 06/14/2011.

Physical Loan Application Deadline Date: 08/09/2011.

EIDL Loan Application Deadline Date: 02/09/2012.

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: The notice of the President's major disaster declaration for the State of Tennessee, dated 05/09/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 08/09/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-15349 Filed 6-20-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12628 and #12629]

Kansas Disaster #KS-00053

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Kansas dated 06/14/2011.

Incident: Flash Flooding.

Incident Period: 06/01/2011 through 06/02/2011.

Effective Date: 06/14/2011.

Physical Loan Application Deadline Date: 08/15/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 03/14/2012.

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 Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Riley.

Contiguous Counties:

Kansas: Clay, Geary, Marshall, Pottawatomie, Wabaunsee, Washington.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
<i>For Economic Injury</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12628 6 and for economic injury is 12629 0.

The State which received an EIDL Declaration # is Kansas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: June 14, 2011.

Karen G. Mills,
Administrator.

[FR Doc. 2011-15333 Filed 6-20-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12576 and #12577]

Missouri Disaster Number MO-00048

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Missouri (FEMA-1980-DR), dated 05/09/2011.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/19/2011 through 06/06/2011.

Effective Date: 06/13/2011.

Physical Loan Application Deadline Date: 07/08/2011.

EIDL Loan Application Deadline Date: 02/09/2012.

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: The notice of the Presidential disaster declaration for the State of Missouri, dated 05/09/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans); Pettis.

Contiguous Counties: (Economic Injury Loans Only):

Missouri: Benton, Cooper, Henry, Johnson, Lafayette, Morgan, Saline.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-15350 Filed 6-20-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12578 and #12579]

Missouri Disaster Number MO-00049

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for

the State of Missouri (FEMA-1980-DR), dated 05/09/2011.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 04/19/2011 through 06/06/2011.

Effective Date: 06/13/2011.

Physical Loan Application Deadline Date: 07/08/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/09/2012.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Missouri, dated 05/09/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Miller, Pettis.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-15348 Filed 6-20-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12624 and #12625]

New Jersey Disaster #NJ-00020

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of New Jersey dated 06/14/2011.

Incident: Severe Storms and Flooding.
Incident Period: 03/10/2011 through 03/17/2011.

Effective Date: 06/14/2011.

Physical Loan Application Deadline Date: 08/15/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 03/14/2012.

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 Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Essex, Morris, Passaic.

Contiguous Counties:

New Jersey: Bergen, Hudson, Hunterdon, Somerset, Sussex, Union, Warren.
New York: Orange, Rockland.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.125
Homeowners without Credit Available Elsewhere	2.563
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12624 6 and for economic injury is 12625 0.

The States which received an EIDL Declaration # are New Jersey, New York.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: June 14, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011-15347 Filed 6-20-11; 8:45 am]

BILLING CODE 8025-01-P

U.S. SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12556 and #12557]

Tennessee Disaster Number TN-00051

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major

disaster for the State of Tennessee (FEMA-1974-DR), dated 05/01/2011.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Associated Flooding.

Incident Period: 04/25/2011 through 04/28/2011.

Effective Date: 06/14/2011.

Physical Loan Application Deadline Date: 08/09/2011.

EIDL Loan Application Deadline Date: 02/01/2012.

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: The notice of the President's major disaster declaration for the State of Tennessee, dated 05/01/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 08/09/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-15335 Filed 6-20-11; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice: 7507]

Culturally Significant Objects Imported for Exhibition; Determinations: "Gabriel von Max: Be-Tailed Cousins and Phantasms of the Soul"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236-3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Gabriel von Max: Be-Tailed Cousins and Phantasms of the Soul," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or

custodians. I also determine that the exhibition or display of the exhibit objects at the Frye Art Museum, Seattle, WA, from on or about July 9, 2011, until on or about October 30, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6467). The mailing address is U.S. Department of State, SA-5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522-0505.

Dated: June 13, 2011

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011-15458 Filed 6-20-11; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice: 7472]

International Security Advisory Board (ISAB) Meeting Notice; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App 10(a)(2), the Department of State announces a meeting of the International Security Advisory Board (ISAB) to take place on July 12, 2011, at the Department of State, Washington, DC.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this Board meeting will be closed to the public in the interest of national defense and foreign policy because the Board will be reviewing and discussing matters classified in accordance with Executive Order 13526. The purpose of the ISAB is to provide the Department with a continuing source of independent advice on all aspects of arms control, disarmament, political-military affairs, and international security and related aspects of public diplomacy. The agenda for this meeting will include classified discussions related to the Board's ongoing studies on current U.S. policy and issues regarding arms control, international security, nuclear proliferation, and diplomacy.

For more information, contact Richard W. Hartman II, Executive Director of the International Security Advisory Board,

Department of State, Washington, DC 20520, telephone: (202) 736-4290.

Dated: June 13, 2011.

Richard W. Hartman, II.,

Executive Director, International Security Advisory Board, U.S. Department of State.

[FR Doc. 2011-15457 Filed 6-20-11; 8:45 am]

BILLING CODE 4710-24-P

DEPARTMENT OF STATE

[Public Notice: 7506]

Waiver of Restriction on Assistance to the Central Government of Afghanistan

Pursuant to Section 7086(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Pub. L. 111-117) as carried forward under the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112-10) ("the Act"), and Department of State Delegation of Authority Number 245-1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7086(c)(1) of the Act with respect to Afghanistan, and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register**.

Dated: June 7, 2011.

Thomas R. Nides,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2011-15454 Filed 6-20-11; 8:45 am]

BILLING CODE 4710-46-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aircraft Registration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collected is used by the FAA to register aircraft or hold an aircraft in trust. The

information required to register and prove ownership of an aircraft is required by any person wishing to register an aircraft.

DATES: Written comments should be submitted by August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385-4293, or by e-mail at: Carla.Scott@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0042.

Title: Aircraft Registration.

Form Numbers: FAA Forms 8050-1, 8050-2, 8050-4, 8050-98, 8050-117.

Type of Review: Renewal of an information collection.

Background: Public Law 103-272 states that all aircraft must be registered before they may be flown. It sets forth registration eligibility requirements and provides for application for registration as well as suspension and/or revocation of registration. The information collected is used by the FAA to register an aircraft or hold an aircraft in trust. The information requested is required to register and prove ownership.

Respondents: Approximately 201,016 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 32 minutes.

Estimated Total Annual Burden: 107,188 hours.

Addresses: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES-300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on June 15, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. 2011-15404 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Agency Information Collection Activities; Requests for Comments; Clearance of Renewed Approval of Information Collection; General Aviation Awards Program**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection is used to nominate private citizens for recognition of their significant voluntary contribution to aviation education and flight safety.

DATES: Written comments should be submitted by August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385-4293, or by e-mail at: Carla.Scott@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0574.

Title: General Aviation Awards

Program.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The collection is used to nominate private citizens for recognition of their significant voluntary contribution to aviation education and flight safety. The agency/industry committee uses the information collected to select eight regional winners and one national winner from each group. The respondents are private citizens involved in aviation.

Respondents: Approximately 150 applicants.

Frequency: Information is collected annually.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 150 hours.

Addresses: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES-300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to

enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on June 15, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. 2011-15405 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Agency Information Collection Activities; Requests for Comments; Clearance of Renewed Approval of Information Collection; Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulation**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information is used to determine if applicants satisfy requirements for obtaining a launch license to protect the public from risks associated with reentry operations from a site not operated by or situated on a Federal launch range.

DATES: Written comments should be submitted by August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385-4293, or by e-mail at: Carla.Scott@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0643.

Title: Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulation.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The data is necessary for a U.S. citizen to apply for and obtain a reusable launch vehicle (RLV) mission license or a reentry license for activities by commercial or non-Federal entities (that are not done by or for the U.S.

Government) as defined and required by 49 U.S.C., subtitle IX, chapter 701, formerly known as the Commercial Space Launch Act of 1984, as amended. The information is needed in order to demonstrate to the FAA Office of Commercial Space Transportation (FAA/AST) that the proposed activity meets applicable public safety, national security, and foreign policy interests of the United States.

Respondents: Approximately 3 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 3,000 hours.

Estimated Total Annual Burden: 9,000 hours.

Addresses: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES-300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on June 15, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. 2011-15391 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Agency Information Collection Activities; Requests for Comments; Clearance of Renewed Approval of Information Collection; Protection of Voluntarily Submitted Information**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB)

approval to renew an information collection. One of the ways to have an information program designated as protected under Section 40123 is for an air carrier or other person to submit an application for an individual program. The FAA evaluates the application and either publishes a designation based on the application for public comment or denies the application.

DATES: Written comments should be submitted by August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385-4293, or by e-mail at: Carla.Scott@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0646.

Title: Protection of Voluntarily Submitted Information.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: To encourage people to voluntarily submit desired information, § 40123 was added to Title 49, United States Code, in the Federal Aviation Reauthorization Act of 1996. Section 40123 allows the Administrator, through FAA regulations, to protect from disclosure voluntarily provided information relating to safety and security issues. This rule imposes a negligible paperwork burden for air carriers that choose to participate in this program. The air carrier submits a letter notifying the Administrator that they wish to participate in a current program.

Respondents: Approximately 5 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 5 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES-300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on June 15, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. 2011-15378 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities; Requests for Comments; Clearance of Renewed Approval of Information Collection; Advanced Qualification Program (AQP)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The Advanced Qualification Program (AQP) incorporates data driven quality control processes for validating and maintaining the effectiveness of air carrier training program curriculum content.

DATES: Written comments should be submitted by August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385-4293, or by e-mail at: Carla.Scott@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0701.

Title: Advanced Qualification Program (AQP).

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Under SFAR No. 58, Advanced Qualification Program (AQP), the FAA provides certificated air carriers, as well as training centers they employ, with a regulatory alternative for training, checking, qualifying, and certifying aircrew personnel subject to the requirements of 14 CFR parts 121 and 135. AQP is continuously validated through the collection and analysis of trainee performance. Data collection and analysis processes ensure that the certificate holder provides performance information on its crewmembers, flight instructors, and evaluators that will enable the certificate holder and the FAA to determine whether the form and content of training and evaluation activities are satisfactorily

accomplishing the overall objectives of the curriculum.

Respondents: Approximately 18 certificated air carriers and training centers.

Frequency: Information is collected monthly.

Estimated Average Burden per Response: 1.20 hours.

Estimated Total Annual Burden: 432 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES-300, 950 L'Enfant Plaza SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on June 15, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. 2011-15383 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities; Requests for Comments; Clearance of Renewed Approval of Information Collection; Reporting of Laser Illumination of Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This collection covers the reporting of unauthorized illumination of aircraft by lasers.

DATES: Written comments should be submitted by August 22, 2011.

FOR FURTHER INFORMATION CONTACT:

Carla Scott on (202) 385-4293, or by e-mail at: Carla.Scott@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0698.

Title: Reporting of Laser Illumination of Aircraft.

Form Numbers: Advisory Circular 70-2.

Type of Review: Renewal of an information collection.

Background: Advisory Circular 70-2 provides guidance to civilian air crews on the reporting of laser illumination incidents and recommended mitigation actions to be taken in order to ensure continued safe and orderly flight operations. Information is collected from pilots and aircrews that are affected by an unauthorized illumination by lasers. The requested reporting involves an immediate broadcast notification to Air Traffic Control (ATC) when the incident occurs, as well as a broadcast warning of the incident if the aircrew is flying in uncontrolled airspace. In addition, the AC requests that the aircrew supply a written report of the incident and send it by fax or e-mail to the Washington Operations Control Complex (WOCC) as soon as possible.

Respondents: Approximately 400 pilots and crewmembers.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 15 minutes.

Estimated Total Annual Burden: 100 hours.

Addresses: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES-300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on June 15, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. 2011-15382 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Agency Information Collection Activities; Requests for Comments; Clearance of Renewed Approval of Information Collection; Application for Certificate of Waiver or Authorization**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. U.S. Code authorizes the issuance of regulations governing the use of navigable airspace. Respondents conducting general operation and flight of aircraft or any activity that could encroach on airspace must apply for approval.

DATES: Written comments should be submitted by August 22, 2011.

FOR FURTHER INFORMATION CONTACT:

Carla Scott on (202) 385-4293, or by e-mail at: Carla.Scott@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0027.

Title: Application for Certificate of Waiver or Authorization.

Form Numbers: FAA Form 7711-2.

Type of Review: Renewal of an information collection.

Background: The information collected by FAA Form 7711-2, Application for Certificate of Waiver or Authorization, is reviewed and analyzed by FAA to determine the type and extent of the intended deviation from prescribed regulations. A certificate of waiver or authorization to deviate is generally issued to the applicant (individuals and businesses) if the proposed operation does not create a hazard to person, property, other aircraft, and includes the operation of unmanned aircraft. Applications for certificates of waiver to the provisions of Parts 91 and 101, for authorization to make parachute jumps (other than emergency or military operations) under Part 105, Section 105.15 (airshows and meets) use FAA Form 7711-2.

Respondents: Approximately 25,231 individuals and businesses.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 32 minutes.

Estimated Total Annual Burden: 13,646 hours.

Addresses: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES-300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on June 15, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. 2011-15381 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Agency Information Collection Activities; Requests for Comments; Clearance of Renewed Approval of Information Collection; Malfunction or Defect Report**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collected allows the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements. It is also the basis for issuance of Airworthiness Directives designed to prevent unsafe conditions and accidents.

DATES: Written comments should be submitted by August 22, 2011.

FOR FURTHER INFORMATION CONTACT:

Carla Scott on (202) 385-4293, or by e-mail at: Carla.Scott@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0003.

Title: Malfunction or Defect Report.

Form Numbers: FAA Form 8010-4 .

Type of Review: Renewal of an information collection.

Background: Repair stations certificated under Part 145 and air taxi operators certificated under Part 135 mandatorily submit malfunction or defect reports on Federal Aviation Administration (FAA) Form 8010-4. When defects are reported which are likely to exist on other products of the same or similar design, the FAA may disseminate safety information to a particular section of the aviation community. The FAA also may adopt new regulations or issue Airworthiness Directives (AD's) to address a specific problem.

Respondents: Approximately 57,736 operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 10 minutes.

Estimated Total Annual Burden: 8,653 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES-300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on June 15, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. 2011-15380 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities; Requests for Comments; Clearance of Renewed Approval of Information Collection: Rotorcraft External Load Operator Certificate Application

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Information required from the public by 14 CFR part 133 is used by the FAA to process the operating certificate as a record of aircraft authorized for use, and to monitor Rotorcraft External-Load Operations. **DATES:** Written comments should be submitted by August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385-4293, or by e-mail at: Carla.Scott@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0044.
Title: Rotorcraft External Load

Operator Certificate Application.

Form Numbers: FAA Form 8710-4.

Type of Review: Renewal of an information collection.

Background: The information required by 14 CFR part 133 is used by the FAA to process the operating certificate as a record of aircraft authorized for use, and to monitor Rotorcraft External-Load Operations. FAA Form 8710-4, Rotorcraft External-Load Operator Certificate Application, provides a record of surveillance activities when completed by an inspector. If the information was not collected, FAA would not be able to meet its regulatory responsibilities under Part 133.

Respondents: Approximately 4,000 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 2.26 hours.

Estimated Total Annual Burden: 3,268 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES-300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on June 15, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. 2011-15379 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities; Requests for Comments; Clearance of Renewed Approval of Information Collection; Reduced Vertical Separation Minimum

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Aircraft operators seeking operational approval to conduct RVSM operations within the 48 contiguous United States (U.S.), Alaska and a portion of the Gulf of Mexico must submit an application to the Certificate Holding District Office.

DATES: Written comments should be submitted by August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385-4293, or by e-mail at: Carla.Scott@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0679.
Title: Reduced Vertical Separation

Minimum.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The authority to collect data from aircraft operators seeking operational approval to conduct RVSM operations is contained in part 91, section 91.180. Aircraft operators seeking operational approval to conduct RVSM operations within the 48 contiguous States of the United States (U.S.), Alaska and that portion of the Gulf of Mexico where the FAA provides air traffic services must submit their application to the Certificate Holding District Office (CHDO).

Respondents: Approximately 2,275 operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 30 hours.

Estimated Total Annual Burden: 68,250 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES-300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on June 15, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. 2011-15377 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: License Requirements for Operation of a Launch Site

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information to be collected includes data required for performing launch site location analysis. The launch site license is valid for a period of 5 years. Respondents are licensees authorized to operate sites.

DATES: Written comments should be submitted by August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385-4293, or by e-mail at: Carla.Scott@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0644.

Title: License Requirements for Operation of a Launch Site.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The data requested for a license application to operate a commercial launch site are required by 49 U.S.C. Subtitle IX, 701—Commercial Space Launch Activities, 49 U.S.C. 70101-70119 (1994). The information is needed in order to demonstrate to the FAA Office of Commercial Space Transportation (FAA/AST) that the proposed activity meets applicable public safety, national security, and foreign policy interest of the United States.

Respondents: Approximately 3 applicants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 2,322 hours.

Estimated Total Annual Burden: 6,966 hours.

Addresses: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES-300, 950 L'Enfant Plaza SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on June 15, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. 2011-15406 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Development of Major Repair Data

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. SFAR 36 (to part 121) relieves qualifying applicants involved in aircraft repair of the burden to obtain FAA approval of data developed by them for the major repairs on a case-by-case basis; and provides for one-time approvals.

DATES: Written comments should be submitted by August 22, 2011.

FOR FURTHER INFORMATION CONTACT:

Carla Scott on (202) 385-4293, or by e-mail at: Carla.Scott@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120-0507.

Title: Development of Major Repair Data.

Form Numbers: There are no FAA Forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Amended Special Federal Aviation Regulation (SFAR) No. 36 allows authorized certificate holders (domestic repair stations, air carriers, air taxi operators of large aircraft, and commercial operators of large aircraft) to approve aircraft products and articles for return to service after accomplishing major repairs using data developed by the holder that have not been directly approved by the FAA. The extension of SFAR 36 allows uninterrupted major repair activity by the current authorization holders that qualify under the amended SFAR; those authorizations will be extended without the holders reapplying for authorization. The extension also allows a new, qualified applicant to obtain an authorization instead of petitioning for exemption from the regulations.

Respondents: Approximately 10 certificate holders.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 18 hours.

Estimated Total Annual Burden: 181 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES-300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity

of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on June 15, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES-200.

[FR Doc. 2011-15402 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

U.S. Registration of Aircraft in the Name of Owner Trustees for Non-U.S. Citizen Beneficiary

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

ACTION: Notice of Availability of Documents for Inspection.

SUMMARY: Incident to a public meeting held by the Federal Aviation Administration (FAA) on Wednesday, June 1, 2011, in Oklahoma City, Oklahoma, concerning aircraft registration by owner trustees for non-U.S. citizen beneficiaries, interested parties have submitted written comments to FAA. Those comments as well as the Notice of Public Meeting and FAA slide presentation may be viewed at the Office of Chief Counsel's FAA Web site located at http://www.faa.gov/about/office_org/headquarters_offices/agc/. Additional comments are being accepted by the FAA through July 1, 2011, and may be submitted via e-mail to ladeana.peden@faa.gov.

FOR FURTHER INFORMATION CONTACT: LaDeana Peden at 405-954-3296, Office of Aeronautical Center Counsel, Federal Aviation Administration.

Issued in Oklahoma City, Oklahoma on June 13, 2011.

Joseph R. Standell,

Aeronautical Center Counsel.

[FR Doc. 2011-15376 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(j)(1). The actions relate to a proposed State Route 99/State Route 219 (Kiernan Avenue) interchange in the community of Salida in Stanislaus County, in the State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(j)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before December 18, 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 that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Gail Miller, Senior Environmental Planner, California Department of Transportation (Caltrans), 2015 East Shields Avenue, Suite 100, Fresno, CA 93726; weekdays 8 a.m. to 5 p.m. (Pacific time); telephone (559) 243-8274, e-mail: gail_miller@dot.ca.gov.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and Caltrans assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(j)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The State Route 99/State Route 219 (Kiernan Avenue) Interchange project in the community of Salida in Stanislaus County, California. The purpose of the project is to reduce delay and avoid traffic backup in the State Route 99/State Route 219 (Kiernan Avenue) interchange area, improve traffic operations and reduce traffic congestion at the State Route 99/State Route 219 (Kiernan Avenue) interchange. This would be accomplished by rebuilding the State Route 99/State Route 219 (Kiernan Avenue) interchange, adding four additional travel lanes to State Route 219 (Kiernan Avenue) within the project limits, and changing the existing interchange on- and off-ramps to and from State Route 99. An auxiliary lane would be added in both directions on State Route 99 between State Route 219

(Kiernan Avenue) and Pelandale Avenue.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA)/ Finding of No Significant Impact (FONSI) for the project, approved on May 25, 2011. The EA/FONSI and other documents are available by contacting Caltrans at the addresses provided above.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; and Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. Air: Clean Air Act [42 U.S.C. 7401-7671(q)].
3. Land: Landscape and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].
4. Wetlands and Water Resources: Safe Drinking Water Act [42 U.S.C. 300(f)-300(j)(6)]; and Wetlands Mitigation [23 U.S.C. 103(b)(6)(m) and 133(b)(11)].
5. Wildlife: Endangered Species Act [16 U.S.C. 1531-1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)]; and Migratory Bird Treaty Act [16 U.S.C. 703-712].
6. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archaeological and Historic Preservation Act [16 U.S.C. 469-469c]; Archaeological Resources Protection Act of 1979 [16 U.S.C. 470aa *et seq.*]; and Native American Graves Protection and Repatriation Act [25 U.S.C. 3001-3013].
7. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; Farmland Protection Policy Act [7 U.S.C. 4201-4209]; and The Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended.
8. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601-9675]; Superfund Amendments and Reauthorization Act of 1986; and Resource Conservation and Recovery Act [42 U.S.C. 6901-6992(k)].
9. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of the Cultural

Environment; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; and E.O. 13112 Invasive Species.

(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).

Issued on: June 15, 2011.

Maiser Khaled,

Acting Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2011-15358 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA-2011-0077]

Federal Interagency Committee on Emergency Medical Services; Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Meeting Notice—Federal Interagency Committee on Emergency Medical Services.

SUMMARY: NHTSA announces a meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS) to be held in the Washington, DC area. This notice announces the date, time and location of the meeting, which will be open to the public. Pre-registration is required to attend.

DATES: The meeting will be held on July 12, 2011, from 1 p.m. EDT to 4 p.m. EDT.

ADDRESSES: The meeting will be held at the Department of Homeland Security (DHS), Office of Health Affairs at 1120 Vermont Avenue, NW., 4th Floor Conference Room, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT:

Drew Dawson, Director, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI-140, Washington, DC 20590, Telephone number (202) 366-9966; E-mail Drew.Dawson@dot.gov.

Required Registration Information: This meeting will be open to the public, however pre-registration is required to comply with security procedures.

Picture I.D. must be provided to enter the DHS Building and it is suggested that visitors arrive 20–30 minutes early in order to facilitate entry. Members of the public wishing to attend must provide their name, affiliation, phone number, and e-mail address to Noah Smith by e-mail at Noah.Smith@dot.gov or by telephone at (202) 366-5030 no later than July 8, 2011, or they will not be allowed into the building. Please be aware that visitors to DHS are subject to search and must pass through a magnetometer. Weapons of any kind are strictly forbidden in the building unless authorized through the performance of the official duties of your employment (i.e. law enforcement officer).

SUPPLEMENTARY INFORMATION: Section 10202 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA-LU), Public Law 109-59, provided that the FICEMS consist of several officials from Federal agencies as well as a State emergency medical services director appointed by the Secretary of Transportation. SAFETEA-LU directed the Administrator of NHTSA, in cooperation with the Administrator of the Health Resources and Services Administration of the Department of Health and Human Services and the Director of the Preparedness Division, Directorate of Emergency Preparedness and Response of the Department of Homeland Security, to provide administrative support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

This meeting of the FICEMS will focus on addressing the requirements of SAFETEA-LU and the opportunities for collaboration among the key Federal agencies involved in emergency medical services. The agenda will include:

- Discussion of Response to Recommendations from the National Transportation Safety Board
 - Update on Helicopter Emergency Medical Services recommendations
 - Presentation of report and draft response on Mexican Hat, Utah Motorcoach Crash recommendations
- Presentation of the National EMS Assessment
- Reports and updates from Technical Working Group committees
- Reports, updates, recommendations from FICEMS members
- A public comment period

There will not be a call-in number provided for this FICEMS meeting, however minutes of the meeting will be

available to the public online at <http://www.ems.gov>.

Issued on: June 16, 2011.

Jeffrey P. Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2011-15401 Filed 6-20-11; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 15, 2011.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before July 21, 2011 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545-1420.

Type of Review: Revision of a currently approved collection.

Title: Claim for Refund of Excise Taxes.

Form: 8849 and related schedules.

Abstract: IRC sections 6402, 6404, 6511 and sections 301.6402-2, 301.6404-1, and 301.6404-3 of the regulations, allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by IRS. Form 8849 is used by taxpayers to claim refunds of excise taxes.

Respondents: Individuals or Households; Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 949,686.

OMB Number: 1545-1760.

Type of Review: Extension without change of a currently approved collection.

Title: Payments From Qualified Education Programs (Under Sections 529 and 530).

Form: 1099-Q.

Abstract: Form 1099-Q is used to report distributions from private and

state qualified tuition programs as required under Internal Revenue Code sections 529 and 530.

Respondents: Private sector: Businesses or other for-profits.

Estimated Total Burden Hours: 33,000.

OMB Number: 1545–2101.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9403—Unrelated Business Income Tax on Charitable Remainder Trusts.

Abstract: This document contains final regulations that provide guidance under Internal Revenue Code (Code) section 664 on the tax effect of unrelated business taxable income (UBTI) on charitable remainder trusts. The regulations reflect the changes made to section 664(c) by section 424(a) and (b) of the Tax Relief and Health Care Act of 2006. The regulations affect charitable remainder trusts that have UBTI in taxable years beginning after December 31, 2006.

Respondents: Private sector: Not-for-profit institutions.

Estimated Total Burden Hours: 50.

OMB Number: 1545–2102.

Type of Review: Revision of a currently approved collection.

Title: Central Withholding Agreement. *Form:* 13930.

Abstract: This form will be used by an individual who wishes to have a Central Withholding Agreement (CWA). This form instructs him regarding how to make his application for consideration. IRS Section 1441(a) requires withholding on certain payments of Non Resident Aliens (NRAs). Section 1.1441–4(b)(3) of the Income Tax Regulations provides that the withholding can be considered for adjustment if a CWA is applied for and granted.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 9,200.

OMB Number: 1545–2201.

Type of Review: Extension without change of a currently approved collection.

Title: TD 9518—Specified Tax Return Preparers Required to File Individual Income Tax Returns Using Magnetic Media.

Abstract: This document contains regulations relating to the requirement for “specified tax return preparers,” generally tax return preparers who reasonably expect to file more than 10 individual income tax returns in a calendar year, to file individual income tax returns using magnetic media pursuant to section 6011(e)(3) of the Internal Revenue Code (Code). The

regulations reflect changes to the law made by the Worker, Homeownership, and Business Assistance Act of 2009. The regulations affect specified tax return preparers who prepare and file individual income tax returns, as defined in section 6011(e)(3)(C). For calendar year 2011, the proposed regulations define a specified tax return preparer as a tax return preparer who reasonably expects to file (or if the preparer is a member of a firm, the firm’s members in the aggregate reasonably expect to file) 100 or more individual income tax returns during the year, while beginning January 1, 2012 a specified tax return preparer is a tax return preparer who reasonably expects to file (or if the preparer is a member of a firm, the firm’s members in the aggregate reasonably expect to file) 11 or more individual income tax returns in a calendar year.

Respondents: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 1,689,930.

OMB Number: 1545–2203.

Type of Review: Extension without change of a currently approved collection.

Title: Allocation of Increase in Basis for Property Received from a Decedent.

Form: 8939 and related schedules.

Abstract: Section 6018 of the Internal Revenue Code requires this return to be filed by an executor the fair market value of all property (other than cash) acquired from the decedent is more than \$1.3 million; in the case of a decedent who was a nonresident not a citizen of the United States, the fair market value of tangible property situated in the United States and other property acquired from the decedent by a United States person is greater than \$60,000; or appreciated property is acquired from the decedent that the decedent acquired by gift within three years of death and a gift tax return was required to be filed on the transfer to the decedent. Section 6018(e) also requires executors who must file Form 8939 to provide the same information to recipients of the property as the executor must provide to the IRS.

Respondents: Individuals and Households.

Estimated Total Burden Hours: 1,725,090.

Bureau Clearance Officer: Yvette Lawrence, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224; (202) 927–4374.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New

Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–15316 Filed 6–20–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 15, 2011.

The Department of Treasury will submit the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the publication date of this notice. A copy of the submission may be obtained by calling the Bureau Information Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

Dates: Written comments should be received on or before July 21, 2011 to be assured of consideration.

Community Development Financial Institutions (CDFI) Fund

OMB Number: 1559–NEW.

Type of Review: New collection.

Title: Capacity Building Initiative.

Abstract: Pursuant to the Community Development Banking and Financial Institutions Act of 1994 (the Act), as amended (12 U.S.C. 4701 *et seq.*), the CDFI Fund provides training and technical assistance to Community Development Financial Institutions (CDFIs) and similar entities in order to enhance their ability to make loans and investments and provide services for the benefit of designated investment areas and targeted populations. The information collected will be used to identify specific topics for training and technical assistance and develop course content which will be tailored to the needs and capacity levels of recipients. The requested information is necessary to support effective use of Federal resources.

Respondents: Certified CDFIs, entities seeking CDFI certification and similar entities.

Estimated Total Annual Burden Hours: 9,000.

CDFI Fund Clearance Officer: Charles McGee, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW.,

Suite 205, Washington, DC 20005; (202) 622-8453.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395-7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011-15329 Filed 6-20-11; 8:45 am]

BILLING CODE 4810-70-P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for National September 11 Memorial & Museum Commemorative Medal

ACTION: Notice.

SUMMARY: The United States Mint is announcing the price of the National September 11 Memorial & Museum Commemorative Medal. Introductory pricing will be \$56.95, and regular pricing, which will go into effect approximately 60 days after the on-sale date, will be \$66.95.

FOR FURTHER INFORMATION CONTACT: B. B. Craig, Associate Director for Sales and

Marketing; United States Mint; 801 9th Street, NW.; Washington, DC 20220, or call 202-354-7500.

Authority: 31 U.S.C. 5111 & 9701; Public Law 111-221.

Dated: June 15, 2011.

Richard A. Peterson,

Acting Director, United States Mint.

[FR Doc. 2011-15330 Filed 6-20-11; 8:45 am]

BILLING CODE;P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0747]

Fully Developed Claim (Fully Developed Claims—Applications for Compensation, Pension, DIC, Death Pension, and/or Accrued Benefits); Correction

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice; correction.

SUMMARY: The Department of Veterans Affairs (VA) published a collection of information notice in a **Federal Register** on June 15, 2011, that contained an

error. The notice mistakenly omits a word and incorrectly identifies who is required to sign and date the certification. This document corrects the error by inserting the omitted word and by removing “or their representative” each place it appears.

DATES: This correction is effective June 21, 2011.

FOR FURTHER INFORMATION CONTACT:

Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at 202-461-7485.

Correction

In FR Doc. 2011-14760, published on June 15, 2011, at 76FR115, make the following correction. On page 35086, in the third column, under Abstract, insert the word “be” before “used” and remove “or their representative” each place it appears.

William F. Russo,

Deputy Director, Office of Regulation and Policy, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2011-15427 Filed 6-20-11; 8:45 am]

BILLING CODE 8320-01-P



FEDERAL REGISTER

Vol. 76

Tuesday,

No. 119

June 21, 2011

Part II

Department of Labor

Office of Labor-Management Standards

29 CFR Parts 405 and 406

Labor-Management Reporting and Disclosure Act; Interpretation of the
“Advice” Exemption; Proposed Rule

DEPARTMENT OF LABOR**Office of Labor-Management Standards****29 CFR Parts 405 and 406**

RIN 1215-AB79

RIN 1245-AA03

Labor-Management Reporting and Disclosure Act; Interpretation of the "Advice" Exemption**AGENCY:** Office of Labor-Management Standards, Department of Labor.**ACTION:** Notice of proposed rulemaking; request for comments.

SUMMARY: The Office of Labor-Management Standards of the Department of Labor (Department) is proposing revisions to the Form LM-10 Employer Report and to the Form LM-20 Agreements and Activities Report, which are required under section 203 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act), 29 U.S.C. 433. These reports cover agreements or arrangements between employers and labor relations consultants whereby the consultant undertakes activities to persuade employees concerning their rights to organize and bargain collectively. The Department proposes to revise its interpretation of the "advice" exemption to such reporting, by limiting the definition of what activities constitute "advice" under the exemption, and thus expanding those circumstances under which reporting is required of employer-consultant persuader agreements. The Department also proposes to revise the forms and instructions to make them more user-friendly and require more detailed reporting on employer and consultant agreements, as well as to require that Forms LM-10 and LM-20 be filed electronically. The Department invites comments on any aspect of this proposed rule.

DATES: Comments must be received on or before August 22, 2011.**ADDRESSES:** You may submit comments, identified by RIN 1215-AB79 and 1245-AA03. (The Regulatory Information Number (RIN) identified for this rulemaking changed with publication of the Spring 2010 Regulatory Agenda due to an organizational restructuring. The old RIN (1215-AB79) was assigned to the Employment Standards Administration, which no longer exists; a new RIN (1245-AA03) has been assigned to the Office of Labor-Management Standards.) The comments can be submitted only by the following methods:

Internet: Federal eRulemaking Portal. Electronic comments may be submitted through <http://www.regulations.gov>. To locate the proposed rule, use RIN number 1245-AA03. Follow the instructions for submitting comments.

Delivery: Comments should be sent to: Andrew R. Davis, Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210. Because of security precautions the Department continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments.

The Office of Labor-Management Standards (OLMS) recommends that you confirm receipt of your delivered comments by contacting (202) 693-0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877-8339 (TTY/TDD). Only those comments submitted through <http://www.regulations.gov>, hand-delivered, or mailed will be accepted. Comments will be available for public inspection at <http://www.regulations.gov> and during normal business hours at the above address.

The Department will post all comments received on <http://www.regulations.gov> without making any change to the comments, including any personal information provided. The <http://www.regulations.gov> Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters not to include personal information such as Social Security numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will become viewable by the public via the <http://www.regulations.gov> Web site. It is the responsibility of the commenter to safeguard this information. Comments submitted through <http://www.regulations.gov> will not include the commenter's e-mail address unless the commenter chooses to include that information as part of his or her comment.

FOR FURTHER INFORMATION CONTACT:

Andrew R. Davis, Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, olms-public@dol.gov, (202) 693-0123 (this is not a toll-free number), (800) 877-8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:**I. Statutory and Regulatory Background***A. History of the LMRDA's Reporting Requirements*

The Secretary of Labor administers and enforces the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), Public Law 86-257, 73 Stat. 519-546, codified at 29 U.S.C. 401-531. The LMRDA, in part, establishes labor-management transparency through reporting and disclosure requirements for labor organizations and their officials, employers, labor relations consultants, and surety companies.

In enacting the LMRDA in 1959, a bipartisan Congress expressed the conclusion that in the labor and management fields "there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives." 29 U.S.C. 401(b).

The LMRDA was the direct outgrowth of an investigation conducted by the Senate Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, which convened in 1958. Enacted in 1959 in response to the report of the McClellan Committee, the LMRDA addressed various ills identified by the Committee through a set of integrated provisions aimed, among other things, at shedding light on labor-management relations, governance, and management. These provisions include financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies. See 29 U.S.C. 431-36, 441.

Among the abuses that prompted Congress to enact the LMRDA was questionable conduct by some employers and their labor relations consultants that interfered with the right of employees to organize labor unions and to bargain collectively under the National Labor Relations Act ("NLRA"), 29 U.S.C. 151 *et seq.* See, e.g., S. Rep. No. 86-187 ("S. Rep. 187") at 6, 10-12 (1959), reprinted in 1 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA Leg. Hist."), at 397, 402, 406-408. Congress was concerned that labor

consultants, acting on behalf of management, worked directly or indirectly to discourage legitimate employee organizing drives and engage in “union-busting” activities. S. Rep. 187 at 10, LMRDA Leg. Hist. at 406. Congress concluded that such consultant activities “should be exposed to public view,” *id.*, S. Rep. at 11, because they are “disruptive of harmonious labor relations and fall into a gray area,” *id.* at 12, even if the consultant’s conduct was not unlawful or otherwise constituted an unfair labor practice under the NLRA.

As a result, Congress imposed reporting requirements on employers and their consultants under LMRDA section 203. Under LMRDA section 208, the Secretary of Labor is authorized to issue, amend, and rescind rules and regulations prescribing the form and publication of required reports, as well as “such other reasonable rules and regulations * * * as [s]he may find necessary to prevent the circumvention or evasion of such reporting requirements.” 29 U.S.C. 438. The Secretary is also authorized to bring civil actions to enforce the LMRDA’s reporting requirements. 29 U.S.C. 440. Willful violations of the reporting requirements, knowing false statements made in a report, and knowing failures to disclose a material fact in a report are subject to criminal penalties. 29 U.S.C. 439.

B. Statutory and Regulatory Requirements for Employer and Labor Relations Consultant Reporting

Section 203(a) of the LMRDA, 29 U.S.C. 433(a), requires employers to report to the Department of Labor:

Any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing * * *

29 U.S.C. 433(a)(4).¹ “[A]ny payment (including reimbursed expenses) pursuant to an agreement or arrangement described in” this provision must also be reported. 29 U.S.C. 433(a)(5).

The report must be one “showing in detail the date and amount of each such

¹ The LMRDA defines a “labor relations consultant” as “any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.” 29 U.S.C. 402(m).

payment, * * * agreement, or arrangement * * * and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.” 29 U.S.C. 433. The Department of Labor’s implementing regulations require employers to file a Form LM–10 (“Employer Report”) that contains this information in a prescribed form. *See* 29 CFR part 405.

LMRDA section 203(b) imposes a similar reporting requirement on labor relations consultants and other persons. It provides, in part, that:

Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly—(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing * * * shall file within thirty days after entering into such agreement or arrangement a report with the Secretary * * * containing * * * a detailed statement of the terms and conditions of such agreement or arrangement.

29 U.S.C. 433(b). Section 203(b) also requires persons subject to this requirement to report receipts and disbursements of any kind “on account of labor relations advice and services.” The Department of Labor’s implementing regulations require labor relations consultants and other persons who have engaged in reportable activity to file a Form LM–20 “Agreement and Activities Report” within 30 days of entering into the reportable agreement or arrangement, and a Form LM–21 “Receipts and Disbursements Report” within 90 days of the end of the consultant’s fiscal year, if during that year the consultant received any receipts as a result of a reportable agreement or arrangement. The consultant must report the required information on a prescribed form. *See* 29 CFR part 406.

LMRDA section 203 creates an exemption from the requirement to report agreements or arrangements to persuade employees for “advice” or representation before a court, agency or arbitral tribunal, or in collective bargaining. Section 203(c) provides in pertinent part that:

Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer * * *.

29 U.S.C. 433(c).

Finally, LMRDA section 204 exempts attorney-client communications from reporting, which is defined as,

“information which was lawfully communicated to [an] * * * attorney by any of his clients in the course of a legitimate attorney-client relationship.” 29 U.S.C. 434.

II. Authority

The legal authority for this notice of proposed rulemaking is set forth in sections 203 and 208 of the LMRDA, 29 U.S.C. 432, 438. Section 208 of the LMRDA provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under Title II of the Act and such other reasonable rules and regulations as she may find necessary to prevent the circumvention or evasion of the reporting requirements. 29 U.S.C. 438. The Secretary has delegated her authority under the LMRDA to the Director of the Office of Labor-Management Standards and permits re-delegation of such authority. *See* Secretary’s Order 8–2009, 74 FR 58835 (Nov. 13, 2009).

III. History of the Department’s Interpretation of LMRDA Section 203(c)

The “advice” exemption of LMRDA section 203(c) is reflected in the Department’s implementing regulations, but the regulations simply track the language of the statute. 29 CFR 405.6(b), 406.5(b). However, the Department has interpreted the “advice” exemption in the course of administering the LMRDA, and those interpretations have been communicated primarily in documents intended to guide Department staff in administering the statute. As explained below, interpretations have varied during the years since the LMRDA was enacted.² A revised interpretation of the advice exemption, published in 2001 for public notice, 66 FR 2782, was rescinded almost immediately by the successive administration, 66 FR 18864.

A. The Initial Interpretation in 1960

In its earliest approach to the “advice” exemption, reflected in a 1960 technical assistance publication to guide employers, the Department took the position that employers were required to report any “arrangement with a ‘labor relations consultant’ or other third party

² That the “advice” exemption of LMRDA section 203(c) might pose interpretive challenges was quickly clear to at least some observers. *See, e.g.*, Bureau of National Affairs, *The Labor Reform Law 36 (1959)* (“The exemption applicable to consultants who merely give advice is susceptible of several different interpretations. * * * It is questionable whether the exemption would also cover payments to a consultant who drafted anti-union letters and otherwise mapped out a campaign to combat union organizing”).

to draft speeches or written material to be delivered or disseminated to employees for the purpose of persuading such employees as to their right to organize and bargain collectively.” Department of Labor, Bureau of Labor-Management Reports,³ Technical Assistance Aid No. 4: Guide for Employer Reporting at p. 18 (1960).

The Department also took the position, in at least some opinion letters to members of the public, that a lawyer or consultant’s revision of a document prepared by an employer was reportable activity. In a 1961 article, a Department of Labor official, after noting that the drafting of speeches or written material by a consultant or lawyer was reportable, addressed the issue of revisions to material prepared by the employer:

[A]dvice to a client with respect to a speech or letter, drafted by the client, is not reportable. However, if the individual undertakes to revise that speech, this constitutes an affirmative act; it is the undertaking of activities to persuade employees in the exercise of their rights and, comparable to the giving of a speech, requires reporting. The Bureau [Bureau of Labor-Management Reports] takes the position that reporting is required in any situation where it is impossible to separate advice from activity which goes beyond advice. In any situation where an attorney undertakes activities which are more than mere advice for the same employer, the exclusion of [LMRDA] section 203(c) does not apply since the causal relationship is clear.

Benjamin Naumoff, *Reporting Requirements under the Labor-Management Reporting and Disclosure Act*, in Fourteenth Annual Proceedings of the New York University Conference on Labor 129, 140–141 (1961) (italics added).

B. The 1962 Revised Interpretation

In 1962, the Department changed its original view of the “advice” exemption, adopting what remained the Department’s interpretation, except for the brief period in 2001.

The change is reflected in a February 19, 1962 memorandum from then Solicitor of Labor Charles Donahue to John L. Holcombe, then Commissioner of the Bureau of Labor-Management Reports, in response to a November 17, 1961 memorandum from Commissioner Holcombe. Commissioner Holcombe sought guidance on “exactly what the Department’s position is with respect to the drafting and editing of communications to employees which are intended to persuade employees.” Holcombe endorsed the view that the

initial preparation of a persuasive document by a lawyer or consultant for use by an employer was reportable, but that revising a draft constituted “advice” for purposes of Section 203(c).

In response, the Donahue memorandum addressed three situations: (1) Where persuasive material is prepared and delivered by the lawyer or consultant; (2) where an employer drafts the material and intends to deliver it to his employees, and a lawyer or other person provides oral or written advice on its legality; and (3) where a lawyer or consultant prepares an entire speech or document for the employer. The Donahue memorandum concluded that the first activity (preparation and delivery of material) was reportable; that the second activity (legal review of a draft) constituted “advice”; and that the third activity (preparation of an entire document) “can reasonably be regarded as a form of written advice where it is carried out as part of a bona fide undertaking which contemplates the furnishing of advice to an employer.” In discussing the reportability of preparing an entire document, the Donahue memorandum observed:

[S]uch activity in itself will not ordinarily require reporting unless there is some indication that the underlying motive is not to advise the employer. In a situation where the employer is free to accept or reject the written material prepared for him and there is no indication that the middleman is operating under a deceptive arrangement with the employer, the fact that the middleman drafts the material in its entirety will not in itself generally be sufficient to require a report.

The Donahue memorandum did not explicitly analyze the language of LMRDA section 203 or the statute’s legislative history, but asserted that both had been examined.

In a 1962 presentation to the American Bar Association’s Section of Labor Relations Law, Solicitor Donahue described the Department’s original interpretation of the “advice” exemption this way:

[T]he Department of Labor originally took the position that [the exemptions in LMRDA section 203(b) and section 204] did not extend to drafting or revising speeches, statements, notices, letters, or other materials by attorneys or consultants for the use or dissemination by employers to employees for the purpose of persuading them with respect to their organizing or bargaining rights. This kind of help was not viewed as advice but, instead, was regarded as an affirmative act with the direct or indirect objective of persuading employees in the exercise of their rights.

Charles Donahue, *Some Problems under Landrum Griffin in American Bar*

Association, Section of Labor Relations Law, Proceedings 48–49 (1962). Donahue observed that this position had been “reviewed in the light of Congressional intent,” which revealed “no apparent attempt to curb labor relations advice in whatever setting it might be couched.” *Id.* at 49. Expert legal advice was often necessary, Donahue suggested, and thus:

Even where this advice is embedded in a speech or statement prepared by the advisor to persuade, it is nevertheless advice and must be fairly treated as advice. The employer and not the advisor is the persuader.

Id.

The conclusions and language of the 1962 Donahue memorandum appear as current guidance in section 265.005 (“Scope of the Advice Exemption”) of the LMRDA Interpretative Manual (“IM”). The Manual reflects the Department’s official interpretations of the LMRDA and is intended to guide the work of the staff of the Office of Labor-Management Standards in the administration and enforcement of the statute. Section 265.005 of the Manual states:

Section 203(b) provides for reports from every person who pursuant to an agreement or arrangement with an employer undertakes the type of activities described therein. Section 203(c) provides that nothing in section 203 shall be construed to require any person to file a report * * * by reason of his giving or agreeing to give advice to such employer * * *.”

The question of application of the “advice” exemption requires an examination of the intrinsic nature and purpose of the arrangement to ascertain whether it essentially calls exclusively for advice or other services in whole or in part. Such a test cannot be mechanically or perfunctorily applied. It involves a careful scrutiny of the basic fundamental characteristics of any arrangement to determine whether giving advice or furnishing some other services is the real underlying motivation for it.

As to specific kinds of activity, it is plain that the preparation of written material by a lawyer, consultant, or other independent contractor which he directly delivers or disseminates to employees for the purpose of persuading them with respect to their organizational or bargaining rights is reportable. Moreover, the fact that such material may be delivered or disseminated through an agent would not alter the result. Such undertakings obviously do not call for the giving of advice to an employer.

However, it is equally plain that where an employer drafts a speech, letter or document which he intends to deliver or disseminate to his employees for the purpose of persuading them in the exercise of their rights, and asks a lawyer or other person for advice concerning its legality, the giving of such advice, whether in written or oral form, is not in itself sufficient to require a report.

³ The Bureau of Labor-Management Reports is the predecessor agency to OLMS.

Furthermore, we are now of the opinion that the revision of the material by the lawyer or other person is a form of written advice given the employer which would not necessitate a report.

A more difficult problem is presented where the lawyer or middleman prepares an entire speech or document for the employer. We have concluded that such an activity can reasonably be regarded as a form of written advice where it is carried out as part of a bona fide undertaking which contemplates the furnishing of advice to an employer. Consequently, such activity in itself will not ordinarily require reporting unless there is some indication that the underlying motive is not to advise the employer. In a situation where the employer is free to accept or reject the written material prepared for him and there is no indication that the middleman is operating under a deceptive arrangement with the employer, the fact that the middleman drafts the material in its entirety will not in itself generally be sufficient to require a report.

In later years, the Department reiterated the 1962 position, sometimes expressing doubts about its soundness. See Subcommittee on Labor-Management Relations, H. Comm. on Education and Labor, *The Forgotten Law: Disclosure of Consultant and Employer Activity Under the L.M.R.D.A.* (Comm. Print 1984) (statement of Richard Hunsucker, Director, Office of Labor-Management Standards Enforcement, Labor-Management Standards Administration, U.S. Department of Labor); Subcommittee on Labor-Management Relations, H. Comm. on Education and Labor, *4 Pressures in Today's Workplace* 5 (Comm. Print 1980) (statement of William Hobgood, Assistant Secretary of Labor for Labor-Management Relations) (current interpretation "when stretched to its extreme, * * * permits a consultant to prepare and orchestrate the dissemination of an entire package of persuader material while sidestepping the reporting requirement merely by using the employer's name and letterhead or avoiding direct contact with employees").

C. The Kawasaki Motor Corporation Litigation: *International Union, United Automobile Workers v. Dole*⁴

Prior to the interpretive revision announced in January 2001, the Department of Labor's public statements involving the "advice" exemption were made in the context of litigation. The Department's position in the litigation was consistent with, and derived from, the interpretation of LMRDA section 203(c) reflected in the Donahue

memorandum and section 265.005 of the LMRDA Interpretative Manual.

In 1982, the United Automobile Workers sued the Department, seeking to compel the Department to proceed against the Kawasaki Motor Corporation for failing to report conduct that the union alleged was reportable under LMRDA sections 203(a) and 203(b). One focus of the litigation was Kawasaki's payments to a consultant to devise personnel policies to discourage unionization. The Department took the position that the payments were not reportable, since the consultant's activity constituted "advice" under section 203(c). In a statement of its reasons for not proceeding against Kawasaki, the Department cited section 265.005 of the LMRDA Interpretative Manual and stated: "An activity is characterized as advice if it is submitted orally or in written form to the employer for his use, and the employer is free to accept or reject the oral or written material submitted to him."

A Federal district court ruled against the Department. *International Union v. Secretary of Labor*, 678 F. Supp. 4 (D.D.C. 1988). However, the U.S. Court of Appeals for the District of Columbia Circuit reversed this ruling and deferred to the Department's interpretation of LMRDA section 203 as reasonable in the context of the case, since the statute itself was "silent or ambiguous with respect to the issues before" the court. *International Union, United Automobile Workers v. Dole*, 869 F.2d 616, 617 (DC Cir. 1989) (Ginsburg, J.) Noting the "tension between the coverage provisions of the LMRDA, and the Act's exemption for advice," the appellate court identified two views of those provisions. 869 F.2d at 618. In the "overlap area" of the statute, as the appellate court called it, in which guidance to employers by third-party consultants can theoretically constitute both advice within the meaning of section 203(c) and persuader activity within the meaning of Section 203(b), the interpretive problem involves whether the coverage provision or the exemption controls. *Id.* In the course of the litigation, the appellate court noted, the district court adopted one view and held that the coverage provision prevailed over the advice exemption, while the Secretary adopted the alternate view and concluded through administrative interpretation that the advice exemption trumped the coverage provision. *Id.* The court of appeals upheld the Secretary's long-standing interpretation, recognizing her "right to shape her enforcement policy to the realities of limited resources and competing priorities." 869 F.2d at 620.

Following the decision of the Court of Appeals, OLMS staff was guided by a March 24, 1989 memorandum from then Acting Deputy Assistant Secretary for Labor-Management Standards Mario A. Lauro, Jr. The Lauro Memorandum cited LMRDA Interpretative Manual section 265.005 and stated:

[T]here is no purely mechanical test for determining whether an employer-consultant agreement is exempt from reporting under the section 203(c) advice exemption. However, a usual indication that an employer-consultant agreement is exempt is the fact that the consultant has no direct contact with employees and limits his activity to providing to the employer or his supervisors advice or materials for use in persuading employees which the employer has the right to accept or reject.

The reliance in the 1989 memo on the distinction between a consultant's direct or indirect contact with the employer's employees has origins in the 1962 interpretation.

D. The 2001 Interpretation

In 2001, the Department published a notice of a revised statutory interpretation regarding the advice exemption without request for public comment, which narrowed the category of information exempted from disclosure by consultants. See Interpretation of the "Advice" Exemption in section 203(c) of the Labor-Management Reporting and Disclosure Act, 66 FR 2782 (Jan. 11, 2001) (stating that the application of the "advice" exemption depends on whether an activity can be considered giving "advice," meaning an oral or written recommendation regarding a decision or a course of conduct, as opposed to engaging in direct or indirect persuasion of employees). However, later in 2001, the implementation of the revised interpretation was delayed for sixty days to enable an administration-wide policy review. Interpretation of the "Advice" Exemption in Section 203(c) of the Labor-Management Reporting and Disclosure Act, 66 FR 9724 (Feb. 9, 2001) (temporarily delaying for sixty days the enforcement date of the interpretation).

Then, on April 11, 2001, the Department rescinded the new interpretation and returned to its prior interpretation. See Interpretation of the "Advice" Exemption in section 203(c) of the Labor-Management Reporting and Disclosure Act, 66 FR 18,864 (Apr. 11, 2001) (rescinding the Clinton administration revision of the "advice" exemption of the Labor-Management Reporting and Disclosure Act). In support of the rescission, the April 11 notice cited insufficient evidence to

⁴ *International Union, United Automobile Workers v. Dole*, 869 F.2d 616, 617 (DC Cir. 1989).

justify the revised interpretation and a lack of notice-and-comment procedures. 66 FR at 18864. The April 11 notice also did not subject its return to the prior interpretation to notice-and-comment procedures. However, because the Department views input from the regulated community as important to the revision of the Department's interpretation, this notice now requests such input.⁵

IV. The Need for a Revised Interpretation

A. Summary of the Proposed Interpretation

We now believe that the Department's current interpretation of the advice exemption may be overbroad, and could sweep within it agreements and arrangements between employers and labor consultants that involve certain persuader activity that Congress intended to be reported under the LMRDA. In its Fall 2009 Regulatory Agenda, the Department announced its intention to initiate notice and comment rulemaking on this matter, and on May 24, 2010, a public meeting was held regarding employer and consultant reporting. See 75 FR 27366. At the meeting, the Department heard from interested members of the public, including labor organizations, employer associations, and labor relations consultants.⁶ Though rulemaking is not required to revise the interpretation of "advice," the Department has elected to do so in order to obtain broad public consultation in a matter at the heart of current labor-management relations practice.

The Department proposes to adopt the approach of the "advice" exemption as set forth in its January 11, 2001 notice, as that approach better effectuates the purpose of section 203 of the LMRDA to secure public disclosure concerning employer-consultant agreements that have a direct or indirect object to persuade employees concerning their rights to organize and bargain collectively and preserves the "advice" exemption than the Department's current interpretation.⁷ As discussed in

more detail below, the proposed addition to the Form LM-20 and LM-10 instructions describing the application of the "advice" exemption rejects the current interpretation, which distinguishes between direct and indirect contact and asks whether or not an employer is "free to accept or reject" materials provided. Rather, the revised interpretation focuses on the plain meaning of the term "advice" in the statute's text, and contrasts that plain meaning with those activities undertaken by consultants, which go beyond mere advice and that have a direct or indirect object to persuade employees with respect to their statutory rights. The revised interpretation defines reportable "persuader activities" as all actions, conduct, or communications that have a direct or indirect object to persuade employees, and does not simply address the preparation of persuader materials. The proposed new instructions will state:

With respect to persuader agreements or arrangements, "advice" means an oral or written recommendation regarding a decision or a course of conduct. In contrast to advice, "persuader activity" refers to a consultant's providing material or communications to, or engaging in other actions, conduct, or communications on behalf of an employer that, in whole or in part, have the object directly or indirectly to persuade employees concerning their rights to organize or bargain collectively. Reporting is thus required in any case in which the agreement or arrangement, in whole or part, calls for the consultant to engage in persuader activities, regardless of whether or not advice is also given.

See, *infra*, Sec. V. The proposed instructions also provide examples of reportable and non-reportable agreements or arrangements. See, *infra*, Sec. VI.C. and Appendix A. Reportable agreements include those in which a consultant agrees to plan or orchestrate a campaign or program on behalf of an employer to avoid or counter a union organizing or collective bargaining effort, such as through the specific persuader activities illustrated in the instructions, or otherwise engages on behalf of the employer, in whole or part, in any other actions, conduct, or communications designed to persuade employees. *Id.* A consultant must report if he or she engages in any conduct, actions, or communications that utilize employer representatives to persuade employees. *Id.* For example, a consultant must report if he or she plans, directs, or coordinates the activities of employer representatives (*i.e.*, an employer's managers or supervisors), or provides persuader material to them for dissemination or

distribution to employees. *Id.* Further, drafting or implementing policies for the employer that have the object to directly or indirectly persuade employees would also trigger a reporting obligation. No report is required concerning an agreement or arrangement to exclusively provide advice to an employer, such as when a consultant exclusively counsels employer representatives on what they may lawfully say to employees, ensures a client's compliance with the law, or provides guidance on NLRB practice or precedent. *Id.*

As discussed more fully below, support for this revised interpretation is firmly rooted in the plain meaning of the statutory text. In addition, in examining the legislative history of the reporting obligations pertinent here, the Department has concluded that this revised approach better reflects the congressional intent in enacting the LMRDA. Also, the preamble demonstrates that this revised interpretation has been suggested for decades by various Department agency heads and Executive Branch and Congressional observers, and is amply supported by contemporary academic research in the industrial relations and labor-management fields. This body of research and commentary clearly demonstrates that the labor consultant industry has proliferated since the passage of the LMRDA, that employers mount sophisticated responses to the presence of union-related activity among their employees, and that employers rely to a great extent on such consultants to assist with those responses.

In addition, evidence suggests that despite the extraordinary growth in the labor consultant industry and employers' utilization of that industry to respond to protected employee activity, current reporting under the LMRDA about persuader activity is negligible, as a result of the current overly broad interpretation of the advice exemption. The Department views reporting of persuader agreements or arrangements as providing employees with essential information regarding the underlying source of the views and materials being directed at them, as aiding them in evaluating their merit and motivation, and as assisting them in developing independent and well-informed conclusions regarding union bargaining. Congress viewed such disclosures as mitigating the disruptive impact of labor relations consultants, or as Congress called them, "middlemen," on peaceful and stable labor relations. Indeed, in the Department's view, full

⁵ Agency interpretive rules are excepted from the notice-and-comment procedures of the Administrative Procedures Act. See 5 U.S.C. 553(b)(3)(A).

⁶ An audio recording of the meeting and a copy of a PowerPoint presentation shown at the meeting are available on the OLMS Web site at: <http://www.dol.gov/olms/regs/compliance/ecrmeeting.htm>.

⁷ In focusing on how the "advice" exemption applies to the preparation of written material, the 2001 notice articulates principles generally applicable to determining whether any activity may be considered "advice" within the meaning of the LMRDA or reportable persuader activity.

disclosure of the participation of outside consultants will lead to a better informed electorate, which invariably produces more reliable and acceptable election results less subject to charges and counter-charges, and thus becomes a less disputed, more stable foundation for subsequent labor-management relations.

The Department also proposes related changes to the employer and consultant reporting standards on the Form LM-10 Employer Report and on the Form LM-20 Agreement and Activities Report. In addition, expanded reporting detail concerning reportable agreements and arrangements is proposed for both forms. The Department also proposes modifications of the layout of the LM-10 and LM-20 forms and instructions to better outline the reporting requirements and improve the readability of the information. Finally, the Department proposes that Form LM-10 and Form LM-20 reports must be submitted to the Department electronically, and provides a process to apply for an electronic filing exemption on the basis of specified criteria.

The Department invites comment on the proposed changes, their advantages and disadvantages, and whether the changes would better implement the LMRDA. The Department invites general and specific comments on any aspect of this proposal; it also invites comment on specific points, as noted throughout the text of this notice.

B. The Textual Basis for the Current Interpretation

Section 203(c) of the statute exempts a consultant's services provided "by reason of his giving or agreeing to give advice," without expressly defining or otherwise giving meaning to the term "advice." As noted above, the Department has employed various interpretations of the term over the past five decades, but those interpretations, excluding the short-lived 1960 and 2001 interpretations, have not provided analytical distinctions between exempt "advice" and reportable persuader activity in order to ensure adequate reporting of persuader agreements. In particular, the interpretation of advice currently contained in section 265.005 of the LMRDA Interpretative Manual (IM)—that an activity is characterized as advice if it is submitted orally or in written form to the employer for his use, and the employer is free to accept or reject the oral or written material submitted to him—sets a standard that is not grounded in common or ordinary understanding of the term "advice" as used in section 203(c). The focus on whether an employer can "accept or

reject" the material submitted by a consultant has resulted in an overbroad interpretation of "advice" that, in the Department's present view, exempts from reporting agreements and arrangements to persuade employees for which disclosure is appropriate. The interpretation now proposed by the Department better serves the purposes of section 203 to provide the level of disclosure for persuader agreements as described.

"Advice" ordinarily is understood to mean a recommendation regarding a decision or a course of conduct. *See, e.g.* Merriam-Webster's Collegiate Dictionary, Tenth ed., 18 (2002) (defining "advice" as "recommendation regarding a decision or course of conduct: Counsel"); Black's Law Dictionary (online) (defining "advice" as "guidance offered by one person, esp. a lawyer, to another") (8th ed. 2004); The Oxford English Dictionary (defining "advice" as "opinion given or offered as to action; counsel. spec. medical or legal counsel") (2d ed. 1989). Thus, this common construction of "advice" does not rely on the advisee's acceptance or rejection of the guidance obtained from the advisor. Indeed, the act of supplying the guidance itself, or supplying a "recommendation regarding a decision or a course of conduct," constitutes the provision of advice, regardless of the advisee's ability or authority to act or not to act on it.

The practical applications of the current interpretation of "advice" provide illustrative guidance. The current "advice" standard in the IM treats as advice not only the situation in which a lawyer or consultant reviews drafts of persuasive material at the employer's request to determine whether the statements in the material are permissible under the National Labor Relations Act, but also covers a lawyer or consultant's preparation of persuasive material to be disseminated or distributed to employees. Because an employer generally has the authority to accept or reject the work performed for him or her in either case, the Department's current IM interpretation regards both examples as advice and therefore not triggering reporting. However, in the Department's view, the latter example appears to be quintessential persuader activity—one that has an object to persuade employees. This application demonstrates that the current scope of the "advice" exemption is overbroad and ultimately does not appear to be the best approach in making the statutory distinctions called for.

In contrast, the common understanding of "advice" noted above

would not include, for example, the preparation of persuasive material for dissemination or distribution to employees because undertaking such activity is itself more than a recommendation regarding a course of conduct in the ordinary sense. It is the supply of material or communications that have an object to persuade employees. This distinction is further underscored by the deliberate disclosure in this example of material or communications to third parties (the employees), thus waiving any attorney-client privilege that might have attached to the activity. The Department's current view—that preparation of persuasive material or communications is advice so long as the employer is free to accept or reject the material—thus does not appear to provide the best analytical framework for ensuring necessary disclosure.

For purposes of the LMRDA, the distinction between activities properly characterized as "advice" and those that go beyond "advice" has not been made clear. This is particularly so in the case in which an employer essentially serves as the conduit for persuasive communication or material developed or prepared by an outside consultant or lawyer. The role of the outside consultant in attempting to influence or persuade employees, whether the consultant deals directly with employees or deals with the employer and his or her agents who in turn deal with employees, is the matter required to be disclosed by the statute. To be sure, Congress identified the potential for abuse when employers rely heavily on third parties in the context of union organizing drives and collective bargaining. *See, e.g.*, S. Rep. 187 at 10-11, in LMRDA Leg. Hist. at 406-407 (citing evidence that "large sums of money are spent in organized campaigns on behalf of some employers" and stating that such activity "should be exposed to public view").

As a result, reporting is essential to fulfill the statutory purpose, and thus is mandated, when the consultant activity goes beyond recommending a course of conduct and either directly or indirectly persuades or influences, or attempts to persuade or influence, employees regarding their protected rights. Thus, the better approach for distinguishing between "advice" and "persuader activity" should focus on whether an activity calls exclusively for recommendations or guidance for use by the advisee regardless of whether the advisee may accept or reject it.

Furthermore, the Department's most recent approach does not appear to be

the better reading of LMRDA section 203(a)(4), which requires employer reporting of agreements or arrangements with consultants involved in “activities where an object thereof, directly or indirectly, is to persuade employees,” or of LMRDA section 203(b), which uses a nearly identical formulation (“activities where an object thereof is, directly or indirectly—to persuade employees”). The direct object, or at least the indirect object, of preparing persuasive material that is intended to be transmitted to employees is to persuade employees, regardless of whether it is the employer or the consultant that disseminates the material. It is reasonable to conclude that Congress envisioned that this type of activity, which goes beyond just giving advice in the ordinary sense, would trigger reporting. It is fair to infer that reporting is required when a person engages in persuader activities, whether or not advice is also given. In such instances, the lawyer or other consultant functions less as an advisor to the employer than as a persuader of employees.

C. The Legislative History Supports Narrowing the Interpretation of “Advice”

The current IM interpretation seems inconsistent with the legislative history of section 203 of the LMRDA. It is clear from the legislative history that one of the primary purposes behind the enactment of section 203(b) was to promote an employee’s freedom of choice by revealing to him or her the real source of persuader activity designed to influence the employee in the exercise of protected rights. Further, it is readily apparent from the history that Congress was most concerned with the so-called “middleman” operating under an arrangement with an employer to persuade employees either directly or indirectly through an agent or through some other indirect means.

The problems related to the interference of “middlemen” in the labor relations arena were first identified in Congress by the Senate Select Committee on Improper Activities in the Labor or Management Field, which, after the name of its chairman, became known as the McClellan Committee. Among the abuses uncovered by the McClellan Committee was the employment of middlemen by management to spy on employee organizing activity or to otherwise prevent employees from forming or joining a union, or to induce them to form or join company unions through such deceptive devices as “spontaneous” employee committees, essentially fronts for the employer’s

anti-union activity. S. Rep. No. 85–1417 at 255–300 (1958). In particular, the select committee scrutinized the activities of Nathan W. Shefferman and his labor consulting firm, Labor Relations Associates of Chicago, Inc., concluding that this firm indulged in the worst types of deceptive consultant activity, including organizing “vote no” committees during union campaigns, designing psychometric employee tests designed to weed out pro-union workers, and negotiating improper “sweetheart” contracts with union officials. *Id.*; see also S. Rep. No. 86–1139 at 871. (1960). Having successfully countered 90 percent of the organizing drives he worked to oppose, [Nathan W. Shefferman, *The Man In The Middle* (New York: Doubleday, 1961)], Shefferman can be credited with developing many of the strategies that continue to dominate the field.

In reporting on S. 1555, the Senate version of the bill that ultimately became the LMRDA, the Senate Committee on Labor and Public Welfare adopted one of the central recommendations of the McClellan Committee to “curb activities of middlemen in labor-management disputes.” S. Rep. 187 at 2, LMRDA Leg. Hist. at 398. In describing the problem of “union-busting middlemen,” the Labor Committee stated that it had:

Received evidence in prior hearings showing that large sums of money are spent in organized campaigns on behalf of some employers for the purpose of interfering with the right of employees to join or not to join a labor organization of their choice, a right guaranteed by the National Labor Relations Act. Sometimes these expenditures are hidden behind committees or fronts. However the expenditures are made, they are usually surreptitious because of the unethical content of the message itself. The committee believes that this type of activity by or on behalf of employers is reprehensible * * * [W]here they are engaged in they should be exposed to public view, for if the public has an interest in preserving the rights of employees then it has a concomitant obligation to insure free exercise of them.

S. Rep. 187 at 10–11, LMRDA Leg. Hist. at 406–407. The Labor Committee further noted that:

In almost every instance of corruption in the labor-management field there have been direct or indirect management involvements. The report of the McClellan Committee describes management middlemen flitting about the country on behalf of employers to defeat attempts at labor organization. In some cases they work directly on employees or through committees to discourage legitimate organizational drives or set up company-dominated unions. These middlemen have been known to negotiate sweetheart contracts. They have been involved in bribery and corruption as well as unfair labor

practices. The middlemen have acted in fact if not in law as agents of management. Nevertheless, an attorney for the National Labor Relations Board has testified before the McClellan committee that the [National Labor Relations Act] is not adequate to deal with such activities.

S. Rep. 187 at 10, LMRDA Leg. Hist. at 406.

Accordingly, the Labor Committee indicated that the provision that ultimately became section 203(b) of the LMRDA was necessary in order to

requir[e] reports from middlemen masquerading as legitimate labor consultants. The committee believes that if unions are required to report all their expenditures, including expenses in organizing campaigns, reports should be required from employers who carry on, or engage such persons to carry on, various types of activity, often surreptitious, designed to interfere with the free choice of bargaining representatives by employees and to provide the employer with information concerning the activities of employees or a union in connection with a labor dispute.

S. Rep. 187 at 39–40, LMRDA Leg. Hist. at 435–436. Thus, section 203(b) includes a reporting requirement for consultant activity that not only interferes with, restrains, or coerces employees in their protected rights under the NLRA, *i.e.*, constitutes an unfair labor practice, but also requires reporting of activity to persuade employees that involves conduct that is otherwise legal under the NLRA. S. Rep. 187 at 11, 12, LMRDA Leg. Hist. at 406, 407 (reportable expenditures “may or may not be technically permissible under the National Labor Relations or Railway Labor Acts”).⁸

D. Post-LMRDA Congressional and Executive Branch Observations Regarding Labor Consultant Activity

In 1980 and again in 1984, the Subcommittee on Labor Management Relations of the House Committee on Education and Labor investigated and reported on, among other things, the role of management consultants in employee organizing campaigns and the Department’s requirements for reporting that activity. See Subcommittee on Labor-Management Relations, H. Comm. on Education and Labor, *Pressures in Today’s Workplace* (Comm. Print 1980) (“1980 Subcommittee Report”); Subcommittee on Labor-Management

⁸Labor relations consultants may be held liable by the National Labor Relations Board for unfair labor practices committed on behalf of employers. See, e.g., *Blankenship and Associates, Inc. v. N.L.R.B.*, 999 F.2d 248 (7th Cir. 1993), enforcing 306 N.L.R.B. 994 (1992). Employers may also be held liable, based on the actions of their consultants. See, e.g., *Wire Products Manufacturing Corp.*, 326 N.L.R.B. No. 62 (1998).

Relations, H. Comm. on Education and Labor, *The Forgotten Law: Disclosure of Consultant and Employer Activity Under the L.M.R.D.A.* (Comm. Print 1984) (“1984 Subcommittee Report”).

The 1980 Subcommittee Report noted the growth in employers’ utilization of labor relations consulting firms to engage in persuader activity. 1980 Subcommittee Report at 28 (“[T]he labor consultant industry has undergone very substantial growth since the [passage of the LMRDA], particularly during the past decade.”). This report also notes the increase in the use of law firms to assist employers in their union avoidance activities:

Many lawyers no longer confine their practice to traditional services such as representing employers in administrative and judicial proceedings or advising them about the requirements of the law. They also advise employers and orchestrate the same strategies as non-lawyer consultants for union “prevention,” union representation election campaigns, and union decertification and deauthorization. Lawyers conduct management seminars, publish widely, and often form their own consulting organizations.

1980 Subcommittee Report at 28–29. In addition to noting the increase in labor consultant activity, the 1980 Subcommittee Report characterizes the extent and effectiveness of employer and consultant reporting under the LMRDA as a “virtual dead letter, ignored by employers and consultants and unenforced by the Department of Labor.” 1980 Subcommittee Report at 27. The Subcommittee concluded that the “current interpretation of the law has enabled employers and consultants to shield their arrangements and activities[,]” and called upon the Department to “adopt[] a more reasonable interpretation so the Act can reach consultants who set and control the strategy for employer anti-union efforts but who do not themselves communicate directly with employees.” *Id.* at 44. This recommendation came about, in part, as the result of testimony before the Subcommittee by Assistant Secretary of Labor for Labor-Management Relations William Hobgood, who “acknowledged that Department [enforcement] activity had ‘declined significantly’ since the first few years after the enactment of [the LMRDA],” 1980 Subcommittee Report at 45. Hobgood testified in 1980 that the Department’s interpretation of advice “‘troubles’ him,” and that the Department was “reviewing the question of where advice ends and persuasion begins to make sure the Department’s position is consistent with the law and adequate to deal with the approaches to persuader activities that

have evolved since the law was enacted more than 20 years ago.” *Id.* at 44.

One commenter describes the 1980 Subcommittee hearings this way:

Lawmakers learned that little had changed since the enactment of the LMRDA. Although the consulting industry’s spokesmen claimed that their firms acted only as industrial ‘marriage counselors,’ majority members rejected this contention, writing, ‘consultants promote a perspective of labor-management relations which exalts the short-run over the long-run, presuming that workers will vote against a union, if management exercises the correct combination of manipulation, persuasion and control during the relatively brief duration of an organizing campaign.’ Much of the committee’s interest centered on the business community and their mercenaries’ reluctance to comply with the Landrum-Griffin Act.

Robert Michael Smith, *From Blackjacks to Briefcases: A History of Commercialized Strikebreaking and Unionbusting in the United States* 115 (Athens, OH: Ohio University Press, 2003)

Subsequent subcommittee hearings, conducted in 1984, also addressed labor relations consultants’ and employers’ noncompliance with the LMRDA’s reporting and disclosure requirements. The 1984 Subcommittee Report further underscored the reduction in the filing of LMRDA consultant and employer reports despite evidence of the continuing growth of the consultant industry. 1984 Subcommittee Report at 15. “In the 25 years since the enactment of the LMRDA there has been a dramatic increase in management’s use of consultants to counter the unionization efforts of employees or to decertify existing unions. This well-documented increase has been most pronounced in the past 10 years.” 1984 Subcommittee Report at 2. The Subcommittee again admonished the Labor Department for failing to act on its recommendations from 1980 regarding the need for more vigorous enforcement of employer and consultant reporting requirements, 1984 Subcommittee Report at 4, and suggested that lack of robust enforcement of employer and consultant reporting requirements of section 203 “‘frustrated Congress’ intent that labor-management relations be conducted in the open.” *Id.* at 18.

Concern about the impact of consultant activity on labor-management relations emanated from the Executive Branch as well. In March, 1993, the Secretaries of Labor and Commerce announced the establishment of the U.S. Commission on the Future of Worker-Management Relations, which was charged with investigating and making recommendations regarding enhancement of workplace productivity

and labor-management cooperation, among other things. The Commission, also called the Dunlop Commission after its chairman, Professor John T. Dunlop of Harvard University, held public hearings and took testimony on the state of labor relations in the early 1990s. The Commission issued a fact-finding report in June 1994 and a final report in December of the same year, and the reports provide further support for the need for the revision of the interpretations involving consultant reporting.

In assessing economic costs that labor and management face in the competition surrounding representation elections, the Commission found in its fact-finding report that “[f]irms spend considerable internal resources and often hire management consulting firms to defeat unions in organizing campaigns at sizable cost.” Commission on the Future of Worker-Management Relations, Fact-Finding Report at 74 (May 1994) (hereafter “Dunlop Commission Fact-Finding Report”). Indeed, the Commission concluded, the “NLRA process of representation elections is often highly confrontational with conflictual activity for workers, unions, and firms that thereby colors labor-management relations.” *Id.* at 75. The same report observed that “[s]tudies show that consultants are involved in approximately 70 percent of organizing campaigns,” but also noted that at the time there were “no accurate statistics on consultant activity.” *Id.* at 68. Ultimately, in its final report, the Commission concluded that the “import of the worst features of political campaigns into the workplaces by managers and unions creates confrontation and is not conducive to achieving the goals” of enhancing worker productivity and labor-management cooperation. Commission on the Future of Worker-Management Relations, Report and Recommendations, Final Report at p. 36 (December 1994) (hereafter “Dunlop Commission Final Report”).

E. Current Industrial Relations Research Evidences Proliferation of Consultant Industry and Substantial Use by Employers of Labor Relations Consultants

Contemporary research in the industrial relations arena provides ample support for the conclusion that the consultant industry has mushroomed, and the use of consultants by employers to defeat union organizing efforts has similarly proliferated in recent years. One study estimated that only 100 management consultant firms operated in the 1960s, shortly after the

passage of the LMRDA, and that this number had grown ten times by the mid-1980s. John Logan, *The Union Avoidance Industry in the U.S.A.*, 44 *British Journal of Industrial Relations* 651, 653 (2006) (hereafter “Logan, *Union Avoidance Industry*”). In addition, while the 1980 Subcommittee Report estimated that 66% of employers hired consultants during organizing drives to manage their anti-union campaigns, 1980 Subcommittee Report at 27, and the Dunlop Commission estimated in 1994 that 70% of employers utilized labor consultants, Dunlop Fact-Finding Report at 74, more recent studies place the contemporary consultant-utilization rate of employers who face employee organizing drives somewhere between 71% and 87%. See Kate L. Bronfenbrenner, *Employer Behavior in Certification Elections and First-Contract Campaigns: Implications for Labor Law Reform*, in *Restoring the Promise of American Labor Law* 80 (Sheldon Friedman *et al.* eds. ILR Press 1994) (hereafter “Bronfenbrenner, *Employer Behavior*”) (71% of employers); Logan, *Union Avoidance Industry* at 669 (75% of employers); Kate Bronfenbrenner, Economic Policy Institute, *No Holds Barred: The Intensification of Employer Opposition to Organizing* 13 (2009) (hereafter “Bronfenbrenner, *No Holds Barred*”) (75% of employers in period 1999–2003); Chirag Mehta and Nik Theodore, *American Rights at Work, Undermining the Right to Organize: Employer Behavior during Union Representation Campaigns* 5 (2005) (hereafter “Mehta and Theodore, *Undermining the Right to Organize*”) (82% of employers); James Rundle, *Winning Hearts and Minds in the Era of Employee Involvement Programs*, in *Organizing to Win: New Research on Union Strategies* 213, 219 (Kate Bronfenbrenner, *et al.* eds., Cornell University Press 1998) (hereafter “Rundle, *Winning Hearts and Minds*”) (87% of employers). Based on this review, there can be no doubt that “[e]mployer campaigns against unionization have become standardized, almost formulaic, in large part because employers frequently turn to outside consultants and law firms to manage their anti-union efforts * * * [O]utside consultants have become ubiquitous in representation elections.” Mehta and Theodore, *Undermining the Right to Organize* at 14.

As labor consultants’ roles in employer responses to union activity has grown, so too has the role of law firms specializing in union avoidance. See Logan, *Union Avoidance Industry* at 658, *citing* Bruce E. Kaufman and Paula

E. Stephan, *The Role of Management Attorneys in Union Organizing Campaigns*, 16 *Journal of Labor Research* 439 (1995); John Logan, Trades Union Congress, *U.S. Anti-Union Consultants: A Threat to the Rights of British Workers* 11 (2008) (hereafter “Logan, *U.S. Anti-Union Consultants*”); 1984 Subcommittee Report at 2. As one study reported, attorneys provide employers with a range of services, and have varying degrees of involvement, during union avoidance campaigns:

Typically at the first sign of union activity at a facility management seeks the advice and counsel of one or more attorneys. In some cases the attorney’s role is largely one of providing legal assistance, such as advising supervisors on what constitutes an unfair labor practice under the NLRA, with overall direction of the firm’s campaign entrusted to either top management or an outside consultant. In other situations, the attorney not only provides legal counsel but also plays an important (sometimes dominant) role in developing and implementing the company’s anti-union strategy and campaign tactics. Kaufman and Stephan at 440.

Another evolving dimension of the union avoidance industry is its increasingly sophisticated use of technology, including highly produced anti-union videos and the growing use of information technology. These methods permit consultants to more easily locate anti-union media stories and to disseminate persuader communication more quickly and easily. John Logan, *Consultants, Lawyers, and the ‘Union Free’ Movement*, 33 *Industrial Relations Journal* 197, 212 (2002) (hereafter “Logan, *Union Free Movement*”). For example, a prominent labor relations consulting firm presents the following information on its Web site:

In today’s digital and media driven world, messages must be delivered in varied formats. Custom labor videos provide excellent pro-employer messages with hard-hitting facts as well as personal testimonials and perspectives from employees and supervisors. CD/DVD hosted presentations are another format that will enable you to reach the technical savvy of your employee group, allowing employees to browse through information in “chapters” and learn at their own pace. Digital communications strengthen critical messages with verbal and visual reinforcement.

Another consultant’s Web site promises to “reinforce your campaign message in a format that preserves employee anonymity, enhances personalization and enables dynamic content solutions. Employees will be able to access current news, organizational communications, union activity data and statistics anywhere, anytime.”

F. The Underreporting Problem Is Significant

Although it is clear that employer-consultant persuader activity has continued since enactment of the LMRDA, evidence suggests that much of this persuader activity goes unreported. Although there is some variation from year to year, the average number of representation cases filed with NMB during the FY 2005–2009 is 38.8; the average number of NLRB representation cases filed during the same period is 3,429.2.⁹ Using the median utilization rate of consultants by employers from the studies discussed above, the Department would expect that 75% of the combined NLRB and NMB representation matters would result in 2,601 arrangements or agreements requiring a Form LM–20 consultant report annually during the same five year period.¹⁰ However, the Department received an average of 192.4 LM–20’s annually,¹¹ only 7.4% of those expected. It appears clear that only a small fraction of the organizing campaigns in which consultants were utilized resulted in the filing of a Form LM–20. When such a small proportion of persuader consulting activity is reported, employees are not receiving the information that Congress intended they receive.

Several observers have suggested that persuader reporting has decreased despite the increase in employer utilization of consultants because of the ineffectiveness of the LMRDA. John Logan, *Lifting the Veil’ on Anti-Union Campaigns: Employer and Consultant Reporting under the LMRDA, 1959–2001*, 15 *Advances in Industrial and Labor Relations* 295, 297(2007) (hereafter “Logan, *Lifting the Veil*”) (“As the size and sophistication of the consultant industry has grown, the effectiveness of the law on consultant disclosure and reporting has diminished.”) Indeed, the charge is that

⁹ See *Seventy-Fourth Annual Report of the National Labor Relations Board for the Fiscal Year Ended September 30, 2009* 10 available at http://www.nlr.gov/shared/files/Annual_Reports/NLRB2009.pdf; 2009 NMB Annual Report, Table 1 at 79, available at <http://www.nmb.gov/documents/2009annual-report.pdf>.

¹⁰ This figure may still under represent the total, as it does not take into account employers who hire multiple consultants or consultants who hire sub-consultants, each of whom would need to file separate Form LM–20 reports.

¹¹ Information on the number of LM reports received is available through the Department’s Electronic Labor Organization Reporting System (e.LORS). The Department also used the FY 2009 total for the number of Form LM–20 reports received in estimating the number of Form LM–20 reports for the last information collection request renewal. See the Paperwork Reduction Act analysis in Section VII, C, 1.

“[e]nforcement of the consultant reporting requirements had practically ground to a halt by the mid-1980s—all during a time when, according to organized labor, employers and consultants were ever more actively, boldly, and creatively fighting unionization.” *Id.* at 311.¹² A former consultant, Martin Jay Levitt, has confirmed this criticism:

The law states that management consultants only have to file financial disclosures if they engage in certain kinds of activities, essentially attempting to persuade employees not to join a union or supplying the employer with information regarding the activities of employees or a union in connection with a labor relations matter. Of course, that is precisely what anti-union consultants do, have always done. Yet I never filed with Landrum-Griffin in my life, and few union busters do * * * As long as [the consultant] deals directly only with supervisors and management, [the consultant] can easily slide out from under the scrutiny of the Department of Labor, which collects the Landrum-Griffin reports.

Martin Jay Levitt (with Terry Conrow), *Confessions of a Union Buster* 41–42 (New York: Crown Publishers, Inc. 1993). Mr. Levitt describes consultant strategies that he employed to avoid reporting his activities:

Within a couple of weeks I had identified the few supervisors who were willing to work extra hard for me * * * Through that handful of good soldiers I set to work establishing a network of rank-and-file employees who would serve as spies, informants, and saboteurs. Those so-called loyal employees would be called upon to lobby against the union, report on union meetings, hand over union literature to their bosses, tattle on their co-workers, help spread rumors, and make general pests of themselves within the organizing drive. I rarely knew who my company plants were * * *. It was cleaner that way. Nobody could connect me to the activities, I steered clear of the reporting requirements of Landrum-Griffin, and the workers’ ‘pro-company’ counter campaign was believed to be a grass-roots movement.

Id. at 181. Mr. Levitt’s description of the actual practice of labor relations consultants is consistent with prior statements by other consultants. See 1980 Subcommittee Report at 44 (quoting testimony of labor relations consultant and stating that the “current interpretation of the law has enabled employers and consultants to shield their arrangements and activities”).¹³

¹² See also Assistant Secretary Hobgood’s testimony, discussed *supra*, “acknowledg[ing] that Department [enforcement] activity had ‘declined significantly’ since the first few years after the enactment of [the LMRDA].” 1980 Subcommittee Report at 45.

¹³ See also Robert Michael Smith, *supra*, at 112, which states that “[a]lthough they claimed to tailor

Considering Mr. Levitt’s extensive personal experience in the field, his statements raise concerns about the effectiveness of the LMRDA’s reporting provisions. Mr. Levitt is incorrect in suggesting that the LMRDA, by its terms, requires direct contact between a consultant and employees before the statutory duty to report persuader activities is triggered. But the Department’s most recent interpretation of LMRDA section 203(c) lends itself to the understanding described by Mr. Levitt, since it views most activity other than direct contact between a consultant and employees as falling within the “advice” exemption. If Mr. Levitt’s statement is representative of the consulting industry, then the Department’s most recent interpretation may be contributing to the substantial under-reporting of persuader activities that Congress wanted disclosed.

The evidence suggests that consultants, in order to avoid reporting under the LMRDA, engage predominantly in indirect persuader activity by directing their activities to the employer’s supervisors. The clarification of the distinction between advice and persuader activity is intended to correct this problem, and will result in better information for employees when making decisions about representation.

G. The Proposed Interpretation Would Provide Information That Enables Employees To Make a More Informed Choice Regarding the Exercise of Their Rights To Organize and Bargain Collectively

The reporting of persuader and information-supplying agreements and arrangements enables workers to become more informed as they determine whether to exercise, and the manner of exercising, their protected rights to organize and bargain collectively. As stated above, such disclosure makes employees aware of the underlying source of the information they are receiving, helps them in assessing its content, and assists them in their decision making process regarding union representation. As described above, many employers engage third-party consultants, often attorneys, to conduct “union avoidance” or “counter-organizing” efforts to prevent workers

their strategy to each client’s needs, most modern union busters employed a standardized three-pronged attack. Cognizant of LMRDA guidelines requiring consultants to report their activity only when engaged *directly* in persuading employees in regards to their right to bargain collectively, most consulting teams utilized supervisory personnel as “the critical link in the communications network.” (Italics in original.)

from successfully organizing and bargaining collectively or otherwise acting concertedly. These efforts include the dissemination of persuader material to workers, whether conveyed verbally or in written or electronic formats, as well as the development and implementation of personnel policies and actions. These campaigns often begin before employees initiate a National Labor Relations Board (NLRB) or National Mediation Board (NMB) representation process. Moreover, third-party consultants and attorneys routinely conduct and direct these activities, as employers often retain their services to orchestrate, in whole or part, these union avoidance and counter-organizing efforts.

While in some cases workers may recognize the presentation of anti-union views as those of the employer, and may be aware of some of the employer’s methods used to disseminate those views, employees generally do not know the source of those views or the tactics and strategies chosen to disseminate them. Indeed, to the extent that the employees recognize the presence of a concerted counter-campaign, they typically do not know that a third party has been retained to orchestrate it. See, Logan, *Union Free Movement*, at 201. The disclosure of the employer’s agreement or arrangement with a third-party consultant provides workers with the true source of the arguments and information presented to them, particularly during union organizing efforts. With this information, employees can better evaluate the merits of the employer’s views, and thus are better positioned to make choices regarding their protected rights. Further, workers often do not know that certain actions, such as revisions to personnel policies, are designed and implemented, in whole or part, by a third party, and have an object to persuade them. Nor are they aware whether a consultant or other independent contractor or organization is retained to provide information to the employer concerning the employees or union involved in the labor dispute.

To illustrate the above points, the Department observes that employers often argue to their employees that a union is a “third party” that they do not need to further their interests. See Logan, *U.S. Anti-Union Consultants*, at 7. However, independent of the merits of this view, employees would benefit from information concerning persuader agreements, which reveal a counter-campaign orchestrated in whole or part by a third-party consultant. Employees are more informed in exercising their protected rights when they know the

true source of those views and the methods used to disseminate them.

In particular, as discussed in more depth above, union avoidance efforts often utilize supervisors and other lower-level management representatives, as these individuals are generally known and more easily trusted by the employees than is the consultant. See, Logan, *Union Free Movement*, at 201–203. Employees may evaluate their choices differently when they have information concerning persuader agreements that reveal that a third-party consultant is coordinating the activities of the supervisors by, for example, drafting speeches for one-on-one meetings and directing other day-to-day interactions with employees. Indeed, as explained, the current interpretation of the “advice exemption” exempts reporting when consultants do not have direct contact with employees, even though the direction of supervisors’ persuader activity by third-party consultants is precisely the area about which employees currently lack knowledge.

While employees may or may not otherwise know detailed information concerning their employer, potential union, or the larger labor-management context, the information concerning a persuader agreement with a third-party consultant may provide important clues to the employees that assist them in making decisions. Indeed, employees have a great deal of information available to them concerning unions, such as the annual union financial reporting provided on the Form LM–2, LM–3, and LM–4 pursuant to section 201 of the LMRDA. See submitted reports on the Department’s Web site at <http://www.unionreports.gov>; see also S.Rep. 187 at 39–40, LMRDA Leg. Hist. at 435–436, stating, in part, that “if unions are required to report all their expenditures, including expenses in organizing campaigns, reports should be required from employers who” use third-party consultants.

The disclosure of consultants’ interests in representation and bargaining campaigns promotes the same goals the Department has advanced in regulating unions’ financial disclosure, and furthers parity between the two reporting regimes. The overarching purpose of the LMRDA’s labor organization reporting requirements is to provide union members with “all the vital information necessary for them to take effective action in regulating affairs of their organization.” Labor Organization Annual Financial Reports, 68 FR 58,374, 58,380 (Oct. 10, 2003), quoting S. Rep. 187, 86th Cong., 1st Session, p.9, 1959

U.S.C.C.A.N. 2318, 2325 (1959). By mandating that labor organizations disclose their financial operations to employees they represent, Congress intended to promote union self-government by providing union members with complete and accurate information that would permit them to take effective action in regulating internal union affairs. “[U]nion financial disclosure regimes are intended to reduce the informational advantages agents [unions] have over principals [members] and permit principals to monitor and assess the performance of agents.” *Id.* at 58,378. Disclosure of persuader agreements, in addition to the currently required financial disclosure requirements for unions, will provide the contextualized information that will enhance employees’ ability to evaluate the information and arguments presented by both the employer and the union. This creates more informed voters and more effective employee participation in election decision-making.

Furthermore, the financial disclosure provided by the Form LM–10 concerning the disbursements to the consultant, and the details of the terms and conditions of the persuader agreement on the Form LM–10 and the Form LM–20, also provides important information to the employees. See S.Rep. 187 at 10–11, LMRDA Leg. Hist. at 406–407, referring to the “large sums of money” spent on behalf of some employers to interfere with employee rights guaranteed by the NLRA. For example, as discussed in more detail below, employers have been estimated to spend approximately \$200 million per year in direct payments to defeat organizing drives, with the actual value closer to \$1 billion when factoring indirect costs, such as management time off to oppose unions. Logan, *Union Free Movement* at 198, citing John J. Lawler, *Unionization and Deunionization* (Columbia, SC: University of South Carolina Press 1990). When these persuader expenditures are made to third-party consultants, pursuant to a persuader agreement, employees should have access to information about these payments in order to assess arguments presented to them regarding the merits of organizing a union.

The LMRDA’s provisions requiring the disclosure of consultant participation in representation elections have close analogs in Federal election campaign law. See *Buckley v. Valeo*, 424 U.S. 1 (1976). Early disclosure laws required the reporting of contributions and expenditures to reveal to voters interests or influence that may be involved in Federal election campaigns.

Buckley, 424 U.S. at 61–62. By 1972, Congress replaced the early statutes with the Federal Election Campaign Act (FECA), which imposed reporting obligations on political committees and candidates that receive contributions or make expenditures of over a certain amount in a calendar year. *Id.* at 62. In assessing whether these disclosure requirements served a substantial government interest, the Court noted that FECA’s disclosure requirements “provide[] the electorate with information ‘as to where political campaign money comes from and how it is spent by the candidate’ in order to aid the voters in evaluating those who seek Federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate’s financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.” *Id.* at 66–67, quoting H.R.Rep. No. 92–564, p. 4 (1971). This governmental interest, the Court held, was substantial, and met the constitutional requirements imposed on disclosure laws. *Id.* at 68; see also *Citizens United v. Federal Election Commission*, 130 S.Ct. 876, 916 (2010) (“disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”)

The LMRDA’s disclosure provisions are not unlike the financial disclosure requirements in the FECA and reviewed in *Buckley*. The LMRDA’s requirements are intended to shed light on the financial interests of third parties who have assumed a role in influencing the electorate, which, in the case of the LMRDA, consists of employees making decisions regarding union representation and collective bargaining. Disclosure of the fact that consultants participating in the representation campaign may not be disinterested third parties, but rather are in the business of discouraging union activity, permits employees to better evaluate the arguments presented to them by the consultants. This need for transparency is underscored throughout the statute’s legislative history: “Legislation was needed to control the activities of management middlemen who flitted about the country on behalf of employers interfering with restraining and coercing employees in the exercise

of the right to organize and bargain collectively * * *. The committee believes that employers should be required to report their arrangements with these union-busting middlemen.” S. Rep. No. 85–1684, 85th Cong., 2d Sess. 7–8. To be sure, disclosure statutes serve to “[empower] voters so that they use their vote effectively,” thus increasing voter competence. See Garrett, Elizabeth, *The William J. Brennan Lecture in Constitutional Law: The Future of Campaign Finance Reform Laws in the Courts and in Congress*, 27 Okla. City U. L. Rev. 665, 675 (2002). “Just as disclosure in the corporate realm improves confidence in the economic system and demonstrates values undergirding the economy, disclosure can serve the same function in the political realm.” *Id.* at 691

The Department contends that this reasoning also applies to workers making a determination regarding a vote in a union representation election or otherwise exercising their rights to organize and bargain collectively. Furthermore, regardless of election outcome, the integrity of the union representation election process is strengthened when voters become better informed—by virtue of union disclosure, as well as by consultant and employer disclosure. In this way, the public can be more confident that the election outcomes reflect the sound and informed intent of the voters. This in turn creates greater confidence and trust in labor-management relations.

Similarly, the NLRB has promoted and protected the value to employees of full and accurate information during representation campaigns in its regulation and maintenance of “laboratory conditions” surrounding union elections. See *General Shoe Corp.*, 77 NLRB 124 (1948). The Board’s high standard governing the conduct of the parties during representation elections requires the Board “to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees.” *Id.* at 127. The Board has held that determining the “uninhibited desires of employees” is impeded by “a lack of information with respect to one of the choices available during the election.” *Excelsior Underwear*, 156 NLRB 1236, 1240 (1966) (employer must file with NLRB election eligibility list with names and addresses of all eligible voters, which is provided to all parties in election). In adopting the *Excelsior* rule, the Board noted that disclosure of the eligible voter list will maximize the likelihood that all voters will be exposed to arguments for, as well as

against, union representation; that it will permit the employees to make a more fully informed and reasoned choice; that it will tend to eliminate challenges to voters based solely on lack of knowledge of their identity; that many objections to elections will be settled well in advance of the election; and that the public interest will be furthered in obtaining more prompt resolutions of questions of representation. *Id.* at 1240–1241.

Further, the Board has promoted the goal of achieving the “uninhibited desires of employees” in a multitude of election cases regulating the campaign conduct of the parties. See, e.g., *Peerless Plywood Co.*, 107 NLRB 427, 429 (1954) (forbidding election speeches on company time to assembled employees within 24 hours before election because such speech “overrides arguments made through other campaign media and gives an unfair advantage to the party, whether employer or union, who in this manner obtains the last most telling word.”); *Milchem, Inc.*, 170 NLRB 362 (1968) (election set aside where parties engage in prolonged conversations with prospective voters waiting to cast their ballots, regardless of the content of the remarks exchanged); *Kalin Construction Co.*, 321 NLRB 649 (1996) (prohibiting employer changes in the paycheck process during the 24-hour period prior to the election because the paycheck is symbol of “economic dependence of the employees on their employer” that must not be made part of last-minute campaign).

As with the Board’s rules promoting employee free choice, the LMRDA’s requirements regarding the disclosure of consultant participation in representation campaigns, and specifically the limitations on the interpretation of “advice” proposed here, advance the goals of an informed electorate able to distinguish between well-reasoned and accurate information and campaign pressure. The environment of an NLRB-supervised election is highly competitive and adversarial, and the parties can engage in sophisticated campaign tactics that approach, but may not cross into, objectionable election conduct or unfair labor practices. Pressurized campaign tactics can and do lead to objections regarding the outcome of the election, which results in long periods of litigation before the NLRB about the election conduct. Such disputes heighten the acrimony between the parties, and in the event that the union is ultimately certified, prevent bargaining during the pendency of the election-related litigation. Making transparent the role of consultants

during a campaign will permit employees to better evaluate campaign materials and tactics, increase the integrity of the election outcome, and promote reliance on the results of the election. Non-disputatious representation elections thus establish a firm foundation for the bargaining relationship that may ensue following an election.

H. Effects on Contemporary Labor-Management Relations

In enacting section 203 of the LMRDA, Congress was concerned about the effect of consultant activity on peaceful labor relations. The National Labor Relations Act was enacted in 1935 in part to promote industrial peace through establishing and protecting workers’ fundamental rights to organize and bargain collectively. See 29 U.S.C. 151. By 1959, it had become clear to Congress through the McClellan Committee hearings that activities of consultants, or “middlemen” as they were referred to, were interfering with those protected rights. S. Rep. 187 at 11, LMRDA Leg. Hist. at 407. Whether or not these activities were lawful under the NLRA, or fall into a “gray area,” they were “not conducive to sound and harmonious labor relations” and thus should be reported. *Id.* Full disclosure of those activities ensured an employee’s freedom of choice by revealing to him the real source of propaganda activity designed to persuade him in the exercise of his protected rights.

As in 1959, there is strong evidence today that the undisclosed activities of labor relations consultants are interfering with worker’s protected rights and that this interference is disruptive to effective and harmonious labor relations. For instance, research in the industrial relations arena shows that newly certified unions are much less likely to secure a first contract in cases in which the employer has hired a consultant.¹⁴ See Logan, *Union Free*

¹⁴ First-contracts are crucial to newly certified unions. Under section 9(c)(3) of the NLRA, no elections may be held within one year of the election of an incumbent employee representative. 29 U.S.C. 159(c)(3). Employers understand that unions that do not show results in bargaining during that first year are more vulnerable to challenges, including decertification petitions. As a result, employers may adopt strategies, with the assistance of consultants, to stall bargaining and prevent the adoption of a first contract. One year after an election in which employees voted in favor of union representation, only 48% of bargaining units with certified representatives have executed an initial collective bargaining agreement. Bronfenbrenner, *No Holds Barred* at 22. The Department notes that the observed effects may not be entirely attributable to the use of a consultant,

Movement at 198, citing R. Hurd, *Union Free Bargaining Strategies and First Contract Failures*, in Proceedings of the 48th Meeting of the Industrial Relations Research Ass'n 145 (P. Voos ed. IRRR 1996), and G. Pavy, *Winning NLRB Elections and Establishing Collective Bargaining Relationships*, in Restoring the Promise of American Labor Law 110 (Sheldon Friedman et al. eds. ILR Press 1994); Bronfenbrenner, *Employer Behavior* at 84 (citing probability of winning first contract declining by 10 to 30 percent in bargaining units in which the employer utilizes a labor relations consultant).

Studies also show that accompanying the proliferation of employers' use of labor relations consultants is the substantial utilization of anti-union tactics that are unlawful under the NLRA. Since the rise of consultant industry in the 1970s and 1980s, "no-holds-barred counter-organising campaigns" have become mainstream. Logan, *Union Free Movement* at 207. Some consultants counsel the employer to fire union activists for reasons other than their union activity, or engage in other unfair labor practices, particularly because the penalties for unlawful conduct are typically delayed and may be insignificant, from the employer's viewpoint, compared to the longer-term obligation to deal with employee representatives. Logan, *Union Free Movement* at 207–208 (consultants promote unlawful discharge, surveillance, interrogation, unscheduled pay increases, and threats of dismissal) see also Logan, *The Union Avoidance* at 660–661 (allegations of a prominent anti-union law firm assisting employer in engaging in unlawful tactics in an anti-union campaign in which the employer paid the law firm \$2.7 million). If not unlawful, consultant tactics may be merely offensive. For instance, a prominent anti-union law firm, utilizing a common approach among such firms, advances "militant anti-union rhetoric when marketing its services," such as pushing employers to regard union organizers as a "contagious disease" and to inoculate their employees against the "union virus." The same consultant also has run a seminar titled, "Union Avoidance War Games." Logan, *The Union Avoidance Industry* at 659.

With or without the advice of labor consultants, employers utilize aggressive and even unlawful tactics in opposing unions. Bronfenbrenner found that during the course of an NLRB-

supervised election, 14% of employers utilize surveillance, 63% used supervisors to interrogate employees, 54% used supervisors to threaten employees, 47% threatened cuts in benefits or wages, 18% granted unscheduled raises, 46% made promises of improvement, and 41% harassed and disciplined union activists. Bronfenbrenner, *No Holds Barred* at 10–11. She further estimates that employers discharge union-activist employees in 34% of NLRB-supervised elections, with an average of 2.6 employees discharged per election. *Id.*

The acquired expertise of labor consultants in union avoidance has enabled them to request and be granted complete autonomy in conducting employers' responses to union campaigns. Logan, *Union Free Movement* at 200; Logan, *Union Avoidance Industry* at 652. However, given the view of consultants noted above that they need to operate unseen in the background in order to avoid LMRDA reporting requirements, it is more likely today that employers will hide the activities of consultants, whereas in the 1950s it was more likely that consultants were hired to mask the anti-union sentiments of employers. Logan, *Union Avoidance Industry* at 652. For a more detailed discussion of the activities engaged in by consultants during an anti-union campaign, see Logan, *Union Free Movement in the U.S.A.*, at 200–212. Moreover, the labor consultant industry has developed into a multi-million dollar enterprise. Employers have been estimated to spend approximately \$200 million per year in direct payments to defeat organizing drives, with the actual value closer to \$1 billion when factoring indirect costs, such as management time off to oppose unions. Logan, *Union Free Movement* at 198, citing John J. Lawler, *Unionization and Deunionization* (Columbia, SC: University of South Carolina Press 1990). As such, workers currently or potentially involved in organizing campaigns, as well as unions, and even other employers and the public need information concerning these expenditures to ensure the free and informed choice of employees and harmonious labor-management relations.

The deleterious effect of labor consultant activity on industrial relations is not a new theme. Thirty years ago, it was noted that consultant-led anti-union campaigns and their resulting disruptions inevitably result in declines in workplace productivity. 1980 Subcommittee Report at 42. Similarly, sixteen years ago, it was noted that the "worst features" of

political campaigns had been imported into union election campaigns, Dunlop Commission Final Report at 15, resulting in confrontation and conflict that unnecessarily colors labor-management relations. Dunlop Commission Fact-Finding Report at 68. Current research indicates that these observations are as true today as they were in their time.

The Department concludes that, as was true in the 1950s, the undisclosed use of labor relations consultants by employers interferes with employees' exercise of their protected rights to organize and bargain collectively and disrupts labor-management relations. The current state of affairs is clearly contrary to Congressional intent in enacting section 203 of the LMRDA. Congress intended that employees be permitted to know whether employers are using consultants to run anti-union campaigns or otherwise engage in persuader activities. Such information provides employees the ability to assess the underlying source of the information directed at them, aids them in evaluating its merit and motivation, and assists them in developing independent and well-informed conclusions regarding union representation. As noted above, the rise in the use of labor consultants, the increased tension in labor-management relations, and evidence that the Department's interpretation of the "advice" exemption has led to the under-reporting of these activities all support revision of the interpretation. The Department must take action to ensure that its interpretation of the provisions of section 203 comports with Congressional intent.

V. Proposed Revised Interpretation of the Section 203(c) "Advice" Exemption

As a result of the evidence cited above, the Department considers its current interpretation of the LMRDA section 203(c) "advice" exemption as contributing to substantial underreporting of employer-consultant persuader agreements. The Department's current interpretation of "advice" does not represent the best reading of the statutory language and Congressional intent.

The application of the "advice" exemption depends on whether the activities can fairly be considered as exclusively giving "advice," as opposed to engaging, in whole or part, in any activities that go beyond mere advice and constitute direct or indirect persuasion of employees. For the purposes of the Department's interpretation of section 203(c), "advice" means an oral or written

as some employers may be less supportive of unionization and may choose certain tactics and strategies independent of the use a consultant.

recommendation regarding a decision or a course of conduct. A lawyer or other consultant who exclusively counsels employer representatives on what they may lawfully say to employees, ensures a client's compliance with the law, or provides guidance on NLRB practice or precedent, is providing "advice." However, persons who give advice to employers may also engage in activities that must be reported. When a consultant or lawyer, or her agent, communicates directly with employees in an effort to persuade them, the "advice" exemption does not apply. The duty to report can be triggered even without direct contact between a lawyer or other consultant and employees, if persuading employees is an object, direct or indirect, of the person's activity pursuant to an agreement or an arrangement with an employer.

As discussed above in the discussion of the textual basis for the interpretation, an essential place to begin to draw the distinction between advice and persuader activity is with regard to the preparation of or revision to persuasive materials by labor relations consultants and other persons. Under the proposed interpretation, when such a person prepares or provides a persuasive script, letter, videotape, or other material or communication, including electronic and digital media, for use by an employer in communicating with employees, the "advice" exemption does not apply and the duty to report is triggered. Similarly, a consultant's revision of the employer's material or communications to enhance the persuasive message also triggers the duty to report, unless the revisions exclusively involve advice and counsel regarding the exercise of the employer's legal rights. Material or communications, or revisions thereto, are persuasive if they, for example, explicitly or implicitly encourage employees to vote for or against union representation, to take a certain position with respect to collective bargaining proposals, or refrain from concerted activity (such as a strike) in the workplace.

The concentration on the application of the proposed interpretation to the preparation of persuasive materials and communications, however, does not provide sufficient guidance in view of the array of contemporary practices and tactics of labor consultants. For example, persuader activities may additionally include: Training or directing supervisors and other management representatives to engage in persuader activity; establishing anti-union committees composed of

employees; planning employee meetings; deciding which employees to target for persuader activity or discipline; creating employer policies and practices designed to prevent organizing; and determining the timing and sequencing of persuader tactics and strategies.¹⁵ In these instances, the lawyer or labor consultant has gone beyond mere recommendation and has engaged in actions, conduct, or communications with the object to persuade employees, either directly or indirectly, about the employees' protected, concerted activity. As such, these activities, whether or not the consultant is in direct contact with the employees, trigger the duty to report. These persuader actions, conduct, or communications are precisely the type of activities that Congress intended to bring to light through the section 203 disclosure requirements, and they should not be exempt from reporting by an overbroad application of the section 203(c) advice exemption.

The Department has considered whether seminars, webinars, or conferences offered by lawyers or labor consultants to employers and their representatives must be reported. During such events, guidance is offered to attendees, who represent multiple employers on labor-management relations matters, including how to persuade employees concerning their organizing and bargaining rights. In general, to the extent that these meetings involve actions, conduct, or communications that have a direct or indirect object to persuade employees concerning their representation or collective bargaining rights, then the consultant and employer would be required to file the necessary reports. By contrast, in cases in which a seminar or conference involves no persuader activity, then no duty to report is triggered under the LMRDA. For example, if persuader materials, which are intended for presentation, dissemination, or distribution to employees, are provided to employers at such events, then reporting is triggered.

¹⁵ Services offered on consultant Web sites may also include: Counter-organizing campaigns, including: Developing a campaign strategy; educating management about the organizing process; developing an employee communications program; training, coaching, or counseling supervisors and managers; directing employees to develop and manage the employer's message; helping businesses avoid union petitions and card signing drives; providing vulnerability assessment; labor contract negotiations; developing corporate campaign strategies; providing labor research and communications, including preparation of customized videos, CDs and DVDs with pro-employer messages, and employee and supervisor testimonials; and developing plans to respond to a strike and employees' return to work.

Additionally, if, at such events, consultants train supervisors to conduct individual or group employee meetings, then reporting is also triggered. These examples reflect actions, conduct, and communications that have an object to persuade employees. The Department generally views so-called "union-avoidance" seminars and conferences offered by lawyers or labor consultants to employers to involve reportable persuader activity. The Department also cautions that employers and consultants cannot avoid the reporting requirements by inappropriately labeling an otherwise reportable persuader agreement or arrangement involving a seminar or conference as "advice." The Department invites specific comment on the nature and scope of such seminars, and the applicability of the section 203 reporting requirements to them.

In the past, the Department has concluded that in cases in which a particular consultant activity involves both advice to the employer and persuasion of employees, the "advice" exemption controls. *See, e.g., United Automobile Workers v. Dole, supra*, 869 F.2d at 617–618 (Secretary adopted permissible interpretation that "in the overlap," advice exemption took precedence over the coverage provision). Based on its administrative authority and discretion to select the controlling provision—the coverage provision or the advice provision—that applies in cases in which an activity involves among its purposes a direct or indirect object to persuade employees, 869 F.2d at 620, the Department proposes to adopt its initial 1960 interpretation, which held that "reporting is required in any situation where it is impossible to separate advice from activity that goes beyond advice." Where a particular consultant activity has among its purposes an object, direct or indirect, to persuade employees, the duty to report is triggered. Because persons who give advice to employers in the context of a union organizing campaign or labor dispute may frequently also engage in activities that trigger reporting, the Department concludes that the choice to require reporting in such cases better implements Congressional intent. Thus, if a consultant engages in activities constituting persuader services, then the exemption would not apply even if activities constituting "advice" were also performed or intertwined with the persuader activities. In such circumstance the activities provided pursuant to the agreement or

arrangement with an employer should be reported.¹⁶

Regarding the application of the advice exemption to attorneys, the Department first notes that, with respect to reports by attorneys,¹⁷ the “advice” exemption establishes that so long as the attorney confines him- or herself to advice, he or she need not report, but if the attorney engages in persuader activity, he or she is subject to the reporting requirements. *Humphreys, Hutcheson, and Moseley v. Donovan*, 755 F.2d 1211, 1216 (6th Circuit 1985). For example, if a lawyer drafts a speech for a company’s top manager to give to workers in a captive audience setting, neither the lawyers’ work to ensure its legal sufficiency or implications nor a characterization of the work product as legal advice would alter the reportability of the speech as persuader activity. Section 204 exempts attorneys from reporting “in any report required to be filed” any information protected by the attorney-client privilege. 29 U.S.C. 434. By this provision, Congress intended to afford to attorneys the same protection as that provided in the common-law attorney-client privilege, which protects from disclosure communications made in confidence between a client seeking legal counsel and an attorney. *Id.* In general, the fact of legal consultation, clients’ identities, attorney’s fees and the scope and nature of the employment are not deemed privileged. *Id.*; see also Restatement (Third) of the Law Governing Lawyers § 69. However, in applying the privilege to “report[s] required to be filed,” this provision is operative only after the attorney is required to report because he or she has engaged in persuader activity. Therefore, attorneys who engage in persuader activity must file the Form LM–20, which may require information about the fact of the agreement with an employer involving persuader activity, the client’s identity, the fees involved and the scope and nature of the employment. To the extent that an attorney’s report about his or her

¹⁶ The Department’s position has consistently been, and remains, that in those cases in which an agreement or arrangement involves multiple activities, any one persuader activity covered by the agreement will trigger the duty to report all activities covered by the agreement or arrangement. See Form LM–20 Instructions at http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-20_Instructions.pdf (“If the agreement or arrangement provides for any reportable activity, you must report the information required for the entire agreement or arrangement.”).

¹⁷ The “advice” exemption in section 203(c) excuses “persons”—lawyers and non-lawyers alike—from reporting agreements or arrangements covering the services of such person “by reason of his giving or agreeing to give” advice to an employer.

agreement or arrangement with an employer may disclose privileged communications, for instance where an attorney provides an employer with both legal advice and engages in persuader activities, the privileged matters are protected from disclosure.

For the foregoing reasons, the Department proposes to revise the Form LM–10 and Form LM–20 instructions to better implement the objectives of section 203. The revisions to the instructions will provide filers with guidance on the use of the “advice” exemption of section 203(c).

The Department proposes to amend page 3 of the Form LM–20 instructions to read as follows (the revised language is in *italics*):

GENERAL INSTRUCTIONS FOR AGREEMENTS, ARRANGEMENTS, AND ACTIVITIES

You must file a separate report for each agreement or arrangement made with an employer where the object is, directly or indirectly:

(1) To persuade employees to exercise or not to exercise, or to persuade them as to the manner of exercising, the right to organize and bargain collectively through representatives of their choice. (**Excluded** are agreements or arrangements that cover services relating exclusively to: (1) Giving or agreeing to give advice to the employer; (2) representing the employer before any court, administrative agency, or tribunal of arbitration; and (3) engaging in collective bargaining on the employer’s behalf with respect to wages, hours, or other terms or conditions of employment or the negotiation of any agreement or any questions arising under the agreement.)

or

(2) To supply the employer with information concerning activities of employees or a labor organization in connection with a labor dispute involving such employer. (**Excluded** are agreements or arrangements that cover services relating exclusively to supplying the employer with information for use only in conjunction with an administrative, arbitral, or judicial proceeding.)

NOTE: *If the agreement or arrangement provides for any reportable activity, the exemptions do not apply and information must be reported for the entire agreement or arrangement.*

With respect to persuader agreements or arrangements, “advice” means an oral or written recommendation regarding a decision or a course of conduct. In contrast to advice, “persuader activity” refers to a consultant’s providing material or communications to, or engaging in other actions, conduct, or communications on behalf of an employer that, in whole or in part, have the object directly or indirectly to persuade employees concerning their rights to organize or bargain collectively. Reporting is thus required in any case in which the agreement or arrangement, in whole or in part, calls for the consultant to

engage in persuader activities, regardless of whether or not advice is also given.

Reportable Agreements or Arrangements

An employer and consultant each must file a report concerning an agreement or arrangement pursuant to which the consultant engages in activities that have as a direct or indirect object to, explicitly or implicitly, influence the decisions of employees with respect to forming, joining or assisting a union, collective bargaining, or any protected concerted activity (such as a strike) in the workplace.

Specific examples of persuader activities that, either alone or in combination, would trigger the reporting requirements include but are not limited to: drafting, revising, or providing a persuader speech, written material, website content, an audiovisual or multimedia presentation, or other material or communication of any sort, to an employer for presentation, dissemination, or distribution to employees, directly or indirectly; planning or conducting individual or group meetings designed to persuade employees; developing or administering employee attitude surveys concerning union awareness, sympathy, or proneness; training supervisors or employer representatives to conduct individual or group meetings designed to persuade employees; coordinating or directing the activities of supervisors or employer representatives to engage in the persuasion of employees; establishing or facilitating employee committees; developing employer personnel policies or practices designed to persuade employees; deciding which employees to target for persuader activity or disciplinary action; and coordinating the timing and sequencing of persuader tactics and strategies.

Reportable agreements or arrangements include those in which a consultant plans or orchestrates a campaign or program to avoid or counter a union organizing or collective bargaining effort, such as through the specific persuader activities illustrated above, or otherwise engages on behalf of the employer, in whole or part, in any other actions, conduct, or communications designed to persuade employees. Persuader activities trigger reporting whether or not the consultant performs the activities through direct contact with any employee. For example, a consultant must report if he or she engages in any activities that utilize employer representatives to persuade employees, such as by planning, directing, or coordinating the activities of employer representatives or providing persuader material to them for dissemination or distribution to employees, or in which the consultant drafts or implements policies for the employer that have as an object to directly or indirectly persuade employees.

Exempt Agreements or Arrangements

No report is required concerning an agreement or arrangement to exclusively provide advice to an employer. For example, a consultant who exclusively counsels employer representatives on what they may lawfully say to employees, ensures a client’s compliance with the law, or provides

guidance on NLRB practice or precedent, is providing "advice." Reports are not required concerning agreements or arrangements to exclusively provide such advice.

Generally, no report is required for an agreement or arrangement whereby a lawyer or other consultant conducts a group seminar or conference for employers solely to provide guidance to them. However, if a consultant engages in persuader activities at such meetings, such as those activities enumerated above, then the consultant and employer would be required to file reports concerning such agreement or arrangement. The Department cautions that employers and consultants cannot avoid the reporting requirements by inappropriately labeling an otherwise reportable persuader agreement or arrangement as a "seminar" or "conference."

Additionally, the Department proposes to include the above guidance in the revised Form LM-10 instructions in like manner.¹⁸ The Department seeks comment on its proposed revisions to the Form LM-20 and Form LM-10 instructions.

VI. Proposed Revised Form LM-20, Form LM-10, and Instructions

The Department has not revised the Form LM-20 and Form LM-10 since the advent of the forms in 1963. See 28 FR 14381. With today's proposed change to the interpretation of the advice exemption of section 203(c), the Department also proposes revising Form LM-20 and Form LM-10 and their instructions. The Department is also proposing revisions to sections 405.5 and 405.7 of title 29 of the Code of Federal Regulations to update cross-references in those sections to the instructions.

While some of the proposed revisions are minor stylistic and layout modifications (with the exception of the proposed "advice" exemption guidance described above), there are four other significant proposed changes: (1) The mandating of electronic filing for each form, with language in each set of instructions depicting such process and guidance concerning the application for a hardship exemption from such electronic filing; (2) the addition of a detailed checklist that Form LM-10 and Form LM-20 filers must complete to disclose the scope of activities that consultants have engaged, or intend to engage, in under a reportable agreement or arrangement; (3) the changes to the Form LM-20 and instructions, including the requirement for filers to report their Employee Identification Number, as applicable, and explanations for terms "agreement or arrangement" and "employer"; and (4) the changes to the Form LM-10 and

instructions, including the changes described above to the Form LM-20 and instructions, as well as a revamped layout for the Form LM-10, which divides the report into four parts, each presenting aspects of the reportable transactions, agreements, and arrangements required by sections 203(a)(1)-(5) of the LMRDA, in a more user-friendly manner.

These proposed changes are each discussed in more depth below, and the Department invites comments on each of them, as well as any other aspects regarding the layout of the forms and instructions.

A. Mandatory Electronic Filing for Form LM-20 and Form LM-10 Filers

Currently, only the Form LM-2, Form LM-3, Form LM-4, Labor Organization Annual Reports, can be submitted to OLMS electronically, and only the Form LM-2 must be filed electronically. However, an electronic filing option is planned for all LMRDA reports as part of an information technology enhancement. Electronic reporting contains error-checking and trapping functionality, as well as online, context-sensitive help, which improves the completeness of the reporting. Electronic filing is more efficient for reporting entities, results in more immediate availability of the reports on the agency's public disclosure Web site, and improves the efficiency of OLMS in processing the reports and in reviewing them for reporting compliance. In contrast, paper reports must be scanned and processed for data entry before they can be posted online for disclosure, which delays their availability for public review.

The Department proposes to mandate that the Form LM-20 and Form LM-10 be filed electronically. Currently, labor organizations that file the Form LM-2 are required by regulation to file electronically, and there has been good compliance with this requirement. Like labor unions, employers and consultants have the information technology resources and capacity to file electronically. Further, OLMS has deployed technology improvements that greatly facilitate its electronic filing process and eliminate the expenses formerly associated with such filing.

The proposed Form LM-20 and Form LM-10 Instructions outline a process for seeking an exemption from the electronic filing requirement that is identical to the Form LM-2 process. See Form LM-2 Instructions, Part IV: How to File, located at: <http://www.dol.gov/olms/regs/compliance/erds/LM2Instr2-2-04koREVISED.pdf>. The proposed forms would be completed online,

electronically signed, and submitted with any required attachments to the Department using the OLMS Electronic Forms System (EFS). The electronic forms would be downloaded from the OLMS Web site at <http://www.olms.dol.gov>.

A filer will be able to file a report in paper format only if the filer asserts a temporary hardship exemption or applies for and is granted a continuing hardship exemption. The temporary hardship exemption process, which is currently in place for Form LM-2 filing¹⁹ and would be applied to mandatory electronic filing of the Form LM-20 and LM-10, is as follows:

If a filer experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the organization may file the form in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 1.b (Hardship Exempted Report) that the filer is filing under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards, which can be reached at the address below, by e-mail at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

For a continuing hardship exemption, which is also applicable to Form LM-2 filing²⁰ and will be applied to mandatory electronic filing of the Form LM-20 and LM-10, a filer may:

(a) Apply in writing for a continuing hardship exemption if it cannot be filed electronically without undue burden or expense. Such written application shall be received at least 30 days prior to the required due date of the report(s). The written application shall contain the information set forth in paragraph (b). The application must be mailed to the following address: U.S. Department of Labor, Office of Labor-Management Standards, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by e-mail at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) The justification for the

¹⁹ See <http://www.dol.gov/olms/regs/compliance/erds/LM2Instr2-2-04koREVISED.pdf> at 2.

²⁰ See <http://www.dol.gov/olms/regs/compliance/erds/LM2Instr2-2-04koREVISED.pdf> at 2-3.

¹⁸ The Department also proposes to replace IM entry 265.005 with the proposed text.

requested time period of the exemption; (2) the burden and expense that the filer would incur if it was required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the filer shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of union members and so notifies the applicant, the filer shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, the filer shall submit the report(s) in paper format by the required due date. The filer may be required to submit Form LM-20 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 1.b (Hardship Exempted Report) that the filer is filing under the hardship exemption procedures.

If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

The Department seeks comment on its mandatory electronic filing proposal for Form LM-20 and Form LM-10 filers, including any specific comments on the process for obtaining a hardship exemption, and the proposed revisions to the forms and instructions.

B. Detailing the Activities Undertaken Pursuant to a Reportable Agreement or Arrangement

The current instructions to the Form LM-20 and Form LM-10 do not provide detailed guidance to the filer concerning how to report the nature of the activities undertaken by a consultant pursuant to an agreement or arrangement to persuade. For example, the current Form LM-20 Instructions²¹ for Item 11, Description of Activities, states:

For each activity to be performed, give a detailed explanation of the following:

11.a. *Nature of Activity.* Describe the nature of the activity to be performed. For example, if the object of the activity is to persuade the employees of Employer X to vote "no" on a representation election, so state.

Similarly, the current Form LM-10 Instructions²² in Item 12, Circumstances of all Payments, states:

²¹ The current Form LM-20 form and instructions are available on the OLMS Web site at: http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-20p.pdf and http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-20_instructions.pdf.

²² The current Form LM-10 form and instructions are available on the OLMS Web site at: http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-10p.pdf and http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-10_instructions.pdf.

[You] must provide a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report. Your explanation must contain a detailed account of services rendered or promised in exchange for promises or payments you have already made or agreed to make. Your explanation must fully outline the conditions and terms of all listed agreements.

In practice, the Department receives only vague descriptions of reportable persuader or information supplying activity, such as, "employed to give speeches to employees regarding their rights to organize and bargain collectively" and "presented informational meetings to company employees relative to the process of unionization, the role of the NLRB, and collective bargaining."

As the review of the literature above has demonstrated, a wide range of activities and tactics have been utilized by employers, and employees and the public have a need to know in detail the types of activities in which consultants engage.²³ Vague and brief narrative descriptions and characterizations that are permitted on the current Form LM-20 serve little utility, and a checklist of activities is the best way to ensure more complete reporting of such persuader activities. Additionally, filers are provided an "other" box on the checklist, and will be required to check this box and separately identify any other persuader or information supplying activities that are not listed in the checklist.

The Department seeks comment on the proposed checklist approach for detailing persuader and information supplying activities, as well as the items on the list itself.

²³ As one reviewer has demonstrated, various studies show that in response to union organizing campaigns, employers in the U.S. utilize the following tactics: Between 82% and 93% of employers held forced-attendance ("captive audience") meetings; between 70% and 75% of employers distribute leaflets in the workplace; between 76% and 98% of employers utilize supervisor one-on-one sessions; between 48% and 59% of employers promised improvements; between 20% and 30% of employers granted unscheduled raises; between 25% and 30% of employers fired union supporters; and between 31-50% of employers aided anti-union employees committees. See Logan, *U.S. Anti-Union Consultants* at 5, Table 1, compiling and citing results from Bronfenbrenner, *Employer Behavior* at 75-89; Kate Bronfenbrenner, U.S. Trade Deficit Review Commission, *Uneasy Terrain* (2000); Rundle, *Winning Hearts and Minds* at 213-231; and Mehta and Theodore, *Undermining the Right to Organize*. In addition, a 2009 study showed that 41% of employers used anti-union DVDs, videos, or Internet; 14% used surveillance; 28% attempted to infiltrate organizing committees; 64% interrogated workers about union activity, and 63% of supervisors interrogated workers during one-on-one meetings. Bronfenbrenner, *No Holds Barred* at 10-11, Table 3.

C. Proposed Revised Form LM-20 and Instructions

The Proposed Form LM-20 and Instructions (see appendix A) largely follow the layout of the current form and instructions, although the style has been altered. The proposed form is two pages in length and contains 14 items. The first page includes the first five items, which detail contact and identifying information for the consultant: The file number (Item 1.a.) and contact information for the consultant (Item 2), including information detailing alternative locations for records (Item 3), the date the consultant's fiscal year ends (Item 4), and the type of filer (Item 5), *i.e.*, an individual, partnership, or corporation. The proposed new Item 2 would require the consultant to provide, if applicable, its Employer Identification Number (EIN), which would assist the Department and public in identifying and analyzing other filings by the consultant and any individuals and entities reported on the form. The proposed new Items 1.b. and 1.c. are for the filer to indicate if the report is filed pursuant to a hardship exemption from the proposed electronic filing requirement or is amended, respectively. These items are not in the current form.

Additionally, the first page includes three items describing the employer agreement: The employer's contact information (Item 6), which adds the requirement to report the employer's EIN, the date the agreement was entered into (Item 7), and the person(s) through whom the agreement was made (Item 8). Item 8, which currently requires a consultant to report only the employer representative through whom the reported agreement or arrangement has been made, would be amended to require an indirect party to an employer-consultant agreement or arrangement to identify in a new Item 8(b) the consultant with whom he or she entered into the reportable agreement or arrangement. This specificity is added to clarify the reporting now required on the Form LM-20 when such indirect parties, or "sub-consultants," are engaged by a primary consultant to assist in implementing a reportable agreement or arrangement. The primary consultant would report the employer representative in a new Item 8(a). This requirement is now included in the Form LM-20 Instructions in Part II, Who Must File, but its addition on the form itself will enable the Department, employees, and the public to more easily understand the nature of the activities conducted pursuant to the

agreement or arrangement and determine if additional reports are owed. The front page also includes the signature blocks for the president (Item 13) and the treasurer (Item 14), including the date signed and telephone number.

The second page provides more detail concerning the agreement. Items 9 and 10 would be unchanged. Item 9 requires the filer to indicate if the agreement called for activities concerning persuading employees, supplying the employer with information concerning employees or a labor organization during a labor dispute, or both. Item 10 asks for the terms and conditions of the agreement, and requires written agreements to be attached. Item 11 calls for the provision of certain details concerning any covered agreement or arrangement, and a proposed Item 11.a, as described above in Section VI, B, would require filers to check boxes indicating specific activities undertaken as part of the agreement or arrangement. There is also an "other" box, which requires the filer to provide a narrative explanation of any other reportable activities planned or undertaken that are not specifically contained on the list.

Additionally, Items 11.b, 11.c, and 11.d, respectively, require the consultant, as before the proposed revisions, to indicate the period during which activity was performed, the extent of performance, and the name and address of the person(s) through whom the activity was performed. Item 11.d. would be revised to ask filers to specify if the person or persons performing the activities is employed by the consultant or serves as an independent contractor. In the latter scenario, the person or persons performing the activities is an indirect party to an employer-consultant agreement or arrangement, who would owe a separate Form LM-20 report. This requirement is not new, and it has been incorporated in the Form LM-20 Instructions in Part II, Who Must File, but this addition on the form itself will enable the Department, employees, and the public to more easily understand the nature of the activities conducted pursuant to the agreement or arrangement and determine if additional reports are owed. Finally, Items 12.a and 12.b require the consultant to identify the employees that are targets of the persuader activity and the labor organizations that represent or are seeking to represent them, respectively. To achieve more specificity, Item 12.a as proposed would include a description of the department, job classification(s), work location, and/or shift(s) of the employees targeted.

The proposed Form LM-20 instructions are similar to the current version, and they follow the layout of the proposed form. There are four significant modifications. First, a clarification of the term "agreement or arrangements" has been added to Part II, Who Must File. As there stated: "The term 'agreement or arrangement' should be construed broadly and does not need to be in writing." Second, as discussed above, the proposed form would be submitted electronically, and the Department has made changes to the instructions describing the signature and submission process, as well as a procedure for filers to apply for an exemption from the electronic filing requirement. This procedure is modeled on the procedure for filers of the Form LM-2, Labor Organization Annual Report. Third, the proposed instructions include guidance on the application of the "advice" exemption, in the general guidance on reporting agreements, arrangements, and activities section. Fourth, as discussed, the proposed instructions refer to the new checklist of activities undertaken pursuant to the reportable agreement or arrangement (see Item 11.a).

D. Proposed Form LM-10 and Instructions

The proposed Form LM-10 and Instructions (see appendix B) are significantly different in layout and style from the current form and instructions, although the reporting requirements have been altered only in two respects: The interpretation of the "advice" exemption is now included, and the form now requires detailed information regarding specific activities undertaken pursuant to the agreement or arrangement.

The proposed form is four pages in length and contains 19 items. The first page includes the first seven items, which provide the contact information for the employer. This information includes the file number (Item 1.a.), fiscal year covered (Item 2), contact information for the employer (Item 3), employer's president or corresponding principal officer (Item 4), and any other address containing records needed to verify the report (Item 5), at which of the listed addresses records are kept (Item 6), and type of organization that the employer is, such as an individual, partnership, or corporation (Item 7). Item 3 would be revised to require the employer to provide its EIN, which will assist the Department and public in identifying the employer and analyzing the employer's filings. Item 1.b.is for the filer to indicate if the report is filed pursuant to a hardship exemption from

the proposed electronic filing requirement and Item 1.c. is for the filer to indicate whether the filing is an amended report. These items are not in the current form. The front page also includes the signature blocks, for the president (Item 18) and the treasurer (Item 19), including the date signed and telephone number.

The remainder of the proposed form is divided into four parts: Parts A, B, C, and D. This layout of the form is designed to clarify the Form LM-10 in Item 8, which currently requires the filer to check those box(es) (Items 8.a-8.f) that depict the reportable transaction, arrangement, or agreement, and then fill out a Part B to detail the transaction, arrangement, or agreement. The Department views the steps required by Item 8 as unnecessary and confusing. Part B exacerbates the confusion, because it is a "one size fits all" approach to reporting the diverse information required by section 203(a). Instead, the Department proposes to abandon the approach of the current form contained in Item 8 and Part B, and in its place adopt a four part structure that more conveniently presents the required information.

Proposed Part A requires employers to report payments to unions and union officials. The employer must report on the proposed form the contact information of the recipient in Item 8. In Item 9, the employer must report detailed information concerning the payment(s), including: The date of the payment (Item 9.a); the amount of each payment (Item 9.b), the kind of payment (Item 9.c), and a full explanation for the circumstances of the payment (Item 9.d). There are no changes to the substantive reporting requirements for payments in Part A, which are required pursuant to LMRDA section 203(a)(1).

Proposed Part B requires employers to report certain payments to any of their employees, or any group or committee of such employees, to cause them to persuade other employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing. The employer must report the contact information of the recipient of the payment in Item 10. In Item 11, the employer must report detailed information concerning the payment(s): The date of the payment (Item 11.a); the amount of each payment (Item 11.b), the kind of payment (Item 11.c), and a full explanation for the circumstances of the payment (Item 11.d). There are no changes to the substantive reporting requirements in Part B, which are required by LMRDA section 203(a)(2).

Proposed Part C requires employers to detail any agreement or arrangement with a labor relations consultant or other independent contractor or organization in which the consultant, contractor, or organization undertakes activities with the object to persuade employees or supply information regarding employees and labor organizations involved in a labor dispute. The employer must indicate whether the agreement or arrangement involves one or both of the above purposes by checking the appropriate box in Part C. Next, the employer must provide contact information for the consultant in Item 12. A proposed revision to Item 12 would require the employer to provide the consultant's EIN, as appropriate. The date of the agreement or arrangement and its terms and conditions would be reported in Items 13.a and 13.b, respectively. Item 14 calls for detail concerning the agreements undertaken. A proposed Item 14.a, as described above regarding the proposed Form LM-20, would require filers to check boxes indicating specific activities undertaken or to be undertaken. There is also an "other" box, which requires the filer to provide a narrative explanation for any activities not specified on the list provided on the form. Items 14.b, 14.c, and 14.d, respectively, require, as before, the employer to indicate the period during which the activity was performed, the extent of performance, and the name and address of persons through whom the activity was performed. As with Item 11.d of the proposed Form LM-20, Item 14.d would require filers to specify whether the person performing the activity is employed by the consultant or serves as an independent contractor. Items 14.e and 14.f require the consultant to identify the employees and any labor organization that are targets of the persuader activity. Item 14.e would require a description of the department, job classification(s), work location, and/or shift of the employees targeted. Finally, the employer must provide detailed information concerning any payment(s) made pursuant to the agreement or arrangement: The date of the payment(s) (Item 15.a); the amount of each payment(s) (Item 15.b); the kind of payment(s) (Item 15.c); and a full explanation for the circumstances of the payment(s) (Item 15.d). Information reported in Part C is required by LMRDA sections 203(a)(4) and (5).

Proposed Part D requires employers to report certain expenditures designed to "interfere with, restrain, or coerce" employees regarding their rights to organize or bargain collectively, as well

as expenditures to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute involving such an employer. The employer must indicate the object of the expenditure by checking a box. The employer must report the contact information of the recipient of the expenditure in Item 16. In Item 17, the employer must report detailed information concerning the expenditure(s): The date of the expenditure (Item 17.a); the amount of each expenditure (Item 17.b), the kind of expenditure (Item 17.c), and a full explanation for the circumstances of the expenditure (Item 17.d). There are no changes to the substantive reporting requirements in Part D, which are required by LMRDA section 203(a)(3).

The proposed Form LM-20 instructions follow the layout of the proposed form. The proposed instructions contain the following specific revisions: They include the revised advice interpretation presented in the general instructions for Part C; they provide greater detail on how to complete the new checklist of activities undertaken pursuant to the reportable agreement or arrangement (*see* Item 14.a); and they contain the electronic filing and hardship exemption application procedures discussed above. Additionally, the general instructions for Part C—Persuader Agreements and Arrangements with Labor Relations Consultants have been revised to clarify the term "agreement or arrangement" and "employer," as explained above for the proposed Form LM-20 and instructions.

VII. Regulatory Procedures

Executive Orders 12866 and 13563

Executive Orders 13563 and 12866 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 rule has been designated a "significant regulatory action" although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

In the Paperwork Reduction Act (PRA) analysis below, the Department

estimates that the proposed rule will result in a total recurring burden on employers, labor relations consultants, and other persons of approximately \$826,000. This analysis is intended to address the analysis requirements of both the PRA and the Executive Orders.

Unfunded Mandates Reform

This proposed rule will not include any Federal mandate that may result in increased expenditures by State, local, and Tribal governments, in the aggregate, of \$100 million or more, or in increased expenditures by the private sector of \$100 million or more.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and has determined that the proposed rule does not have federalism implications. Because the economic effects under the rule will not be substantial for the reasons noted above and because the rule has no direct effect on states or their relationship to the Federal government, the rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Analysis of Costs for Paperwork Reduction Act, Executive Orders 12866 and 13563 and Regulatory Flexibility Act

In order to meet the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, Executive Order 13272, and the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and the PRA's implementing regulations, 5 CFR part 1320, the Department has undertaken an analysis of the financial burdens to covered employers, labor relations consultants, and others associated with complying with the requirements contained in this proposed

rule. The focus of the RFA and Executive Order 13272 is to ensure that agencies “review rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the [RFA].” Executive Order 13272, Sec. 1. The more specific focus of the PRA is “to reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the Federal government.” 5 CFR 1320.1.

Compliance with the requirements of this proposed rule involves information recordkeeping and information reporting tasks. Therefore, the overall impact to covered employers, labor relations consultants, and other persons, and in particular, to small employers and other organizations that are the focus of the RFA, is essentially equivalent to the financial impact to such entities assessed for the purposes of the PRA. As a result, the Department’s assessment of the compliance costs to covered entities for the purposes of the PRA is used as a basis for the analysis of the impact of those compliance costs to small entities addressed by the RFA. The Department’s analysis of PRA costs, and the quantitative methods employed to reach conclusions regarding costs, are presented first. The conclusions regarding compliance costs in the PRA analysis are then employed to assess the impact on small entities for the purposes of the RFA analysis, which follows immediately after it.

Paperwork Reduction Act

This statement is prepared in accordance with the PRA, 44 U.S.C. 3501. As discussed in the preamble, this proposed rule would implement an information collection that meets the requirements of the PRA in that: (1) The information collection has practical utility to labor organizations, their members, employees, other members of the public, and the Department; (2) the rule does not require the collection of information that is duplicative of other reasonably accessible information; (3) the provisions reduce to the extent practicable and appropriate the burden on employers, labor relations consultants, and other persons who must provide the information, including small entities; (4) the form, instructions, and explanatory information in the preamble are written in plain language that will be understandable by reporting entities; (5) the disclosure requirements are implemented in ways consistent and

compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of employers, labor relations consultants, and other persons who must comply with them; (6) this preamble informs reporting entities of the reasons that the information will be collected, the way in which it will be used, the Department’s estimate of the average burden of compliance, the fact that reporting is mandatory, the fact that all information collected will be made public, and the fact that they need not respond unless the form displays a currently valid OMB control number; (7) the Department has explained its plans for the efficient and effective management and use of the information to be collected, to enhance its utility to the Department and the public; (8) the Department has explained why the method of collecting information is “appropriate to the purpose for which the information is to be collected;” and (9) the changes implemented by this rule make extensive, appropriate use of information technology “to reduce burden and improve data quality, agency efficiency and responsiveness to the public.” 5 CFR 1320.9; *see also* 44 U.S.C. 3506(c).

A. Summary of the Rule: Need and Economic Impact

The following is a summary of the need for and objectives of the proposed rule. A more complete discussion of various aspects of the proposal is found in the preamble.

The proposed rule would amend the form, instructions, and reporting requirements for the Form LM–10, Employer Report, and the Form LM–20, Agreements and Activities Report, each of which are filed pursuant to section 203 of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 433. Section 203 establishes reporting and disclosure requirements for employers and persons, including labor relations consultants, who enter into any agreement or arrangement whereby the consultant (or other person) undertakes activities to persuade employees as to their rights to organize and bargain collectively or to obtain certain information concerning the activities of employees or a labor organization in connection with a labor dispute involving the employer. Each party must also disclose payments made pursuant to such agreement or arrangement. An employer, additionally, must disclose certain other payments, including payments to its own employees, to persuade employees as to their bargaining rights and to obtain certain information in connection

with a labor dispute. Employers report such information on the Form LM–10, which is an annual report due 90 days after the employer’s fiscal year. Consultants file the Form LM–20, which is due 30 days after entering into each agreement or arrangement with an employer to persuade.

The LMRDA was enacted to protect the rights and interests of employees, labor organizations and their members, and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and labor organization officers, employees, and representatives. Provisions of the LMRDA include financial reporting and disclosure requirements for labor organizations, employers, labor relations consultants, and others as set forth in Title II of the Act. *See* 29 U.S.C. 431–36, 441.

In this proposed rule, the Department proposes to narrow its interpretation of the “advice” exemption of section 203(c) of the LMRDA, which provides, in part, that employers and consultants are not required to file a report by reason of the consultant’s giving or agreeing to give “advice” to the employer. Under current policy, as articulated in the LMRDA Interpretative Manual and in a **Federal Register** notice published on April 11, 2001 (66 FR 18864), this so-called “advice” exemption has been broadly interpreted to exclude from the reporting any agreement under which a consultant engages in activities on behalf of the employer to persuade employees concerning their bargaining rights but has no direct contact with employees, even where the consultant is orchestrating, planning, or directing a campaign to defeat a union organizing effort.

The Department views its current policy concerning the scope of the “advice” exemption as over-broad, and that a narrower construction will result in reporting that more closely reflects the employer and consultant reporting intended by the LMRDA. Strong evidence indicates that since the enactment of the LMRDA in 1959, the use of such consultants by employers to combat union organizing efforts has proliferated. Nevertheless, since it began administering the statute in 1960 the Department has consistently received a small quantity of LM–20 reports relative to the greatly increased employer use of the labor relations consultant industry, which suggests substantial underreporting by employers and consultants. Moreover, evidence indicates that the Department’s broad interpretation of the advice exemption has contributed to this underreporting.

The result of the substantial underreporting of employer-consultant agreements and arrangements, as outlined above, is the failure to advance Congressional objectives concerning labor-management transparency. Furthermore, considerable evidence suggests that the lack of reporting from the consultant industry and employers who rely on consultants has had a deleterious effect on labor-management relations, and regulatory action to revise the advice exemption interpretation is needed to provide labor-management transparency for the public, and to provide workers with information critical to their effective participation in the workplace. Specifically, the Department views the lack of reporting and disclosure by consultants and employers as disrupting employee free choice regarding their rights to organize and bargain collectively and permitting the use of unlawful tactics by employers.

Congress intended that employees would be timely informed of their employer's decision to engage the services of consultants in order to persuade them how to exercise their rights. Congress intended that this information, including "a detailed statement of the terms and conditions" of the agreement or arrangement would be publicly available no later than 30 days after the employer and consultant entered into such relationship. 29 U.S.C. 433(b)(2). With such information, employees are better able to assess the actions of the employer and the employer's message to them as they are considering whether or not to vote in favor of a union or exercise other aspects of their rights to engage in or refrain from engaging in collective bargaining.

Where persuader activities are not reported, employees may be less able to effectively exercise their rights under Section 7 of the National Labor Relations Act and, in some instances, the lack of information will affect their individual and collective choices on whether or not to select a union as the exclusive bargaining representative or how to vote in contract ratification or strike authorization votes. The public disclosure benefit to the employees and to the public at large cannot reasonably be ascertained due to the uncertainty in knowing whether employees would have participated or not in a representation election or cast their ballots differently if they had timely known of the consultant's persuader activities. The real value of the LMRDA public disclosure of information is in its availability to workers and the public in accordance with Congressional intent.

Such information gives employees the knowledge of the underlying source of the information directed at them, aids them in evaluating its merit and motivation, and assists them in developing independent and well-informed conclusions regarding union representation.

The Department also proposes to revise the Form LM-10, the Form LM-20, and the corresponding instructions. These changes include modifications of the layout of the forms and instructions to better outline the reporting requirements and improve the readability of the information. The proposed revised forms also require greater detail about the activities conducted by consultants pursuant to agreements and arrangements with employers.

Finally, the Department proposes that Form LM-10 and LM-20 filers submit reports electronically, but also has provided a process for a continuing hardship exemption, whereby filers may apply to submit hardcopy forms. Currently, labor organizations that file the Form LM-2 Labor Organization Annual Report are required by regulation to file electronically, and there has been good compliance with this submission requirement. Employers and consultants likely have the information technology resources and capacity to file electronically, as well. Moreover, an electronic filing option is also planned for all LMRDA reports as part of an information technology enhancement, including for those forms that cannot now be electronically filed, such as the Form LM-10 and Form LM-20. This addition should greatly reduce the burden on filers to electronically sign and submit their forms.

B. Overview of the Proposed Form LM-10, Form LM-20, and Instructions

1. Proposed Form LM-20 and Instructions

The Proposed Form LM-20 and Instructions (*see* appendix A) are described in section VI. C., above, and this discussion is incorporated here by reference.²⁴

2. Proposed Form LM-10 and Instructions

The Proposed Form LM-10 and Instructions (*see* appendix B) are described in section VI. D., above, and

²⁴ The current Form LM-20 form and instructions are available on the OLSMS website at: http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-20p.pdf and http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-20_Instructions.pdf.

this discussion is incorporated here by reference.²⁵

*C. Methodology for the Burden Estimates*²⁶

The Department first estimated the number of Form LM-10 and Form LM-20 filers that will submit the revised form, as well as the increase in submissions that result from the proposed rule. Then, the estimated number of minutes that each filer will need to meet the reporting and recordkeeping burden of the proposed forms was calculated, as was the total burden hours. The Department then estimated the cost to each filer for meeting those burden hours, as well as the total cost to all filers. Federal costs associated with the proposed rule were also estimated. Please note that some of the burden numbers included in this PRA analysis will not add perfectly due to rounding. Additionally, the Department notes that the burden figures provided below are intended to be reasonable estimates, for the average filer, and not precise statements of the number of filers and hour and cost burden for every filer. The Department invites general and specific comments on each estimate, assumptions made, and any other aspect of this analysis.

1. Number of Proposed Form LM-20 and Form LM-10 Filers

The Department estimates 2,601 proposed Form LM-20 filers and 3,414 proposed Form LM-10 filers. The Form LM-20 total represents an increase of 2,410 Form LM-20 reports over the total of 191 reports estimated in the Department's most recent Information Collection Request (ICR) submission to the Office of Management and Budget (OMB). The Form LM-10 total represents a 2,484 increase over the average of 930 Form LM-10 reports received during FY 2008 and FY 2009.²⁷

a. Form LM-20 Total Filer Estimate

The Department estimates 2,601 proposed Form LM-20 filers, which represents an increase of 2,410 Form LM-20 reports over the total of 191

²⁵ The current Form LM-10 form and instructions are available on the OLSMS website at: http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-10p.pdf and http://www.dol.gov/olms/regs/compliance/GPEA_Forms/lm-10_instructions.pdf.

²⁶ Some of the burden numbers included in both this PRA analysis and regulatory flexibility analysis will not add perfectly due to rounding.

²⁷ The Department did not utilize the Form LM-10 reports estimate from its recent ICR submission to OMB, because this total did not break the reports out pursuant to subsection of section 203(a), as did the FY 2007 and FY 2008 study explained below, and the total of 930 reports is almost identical to the 938 Form LM-10 reports estimated in the recent ICR submission.

reports estimated in the Department's most recent ICR submission to the OMB. To estimate the total number of proposed Form LM-20 filers, the Department employed the median rate (75%) of employer utilization of consultants to run an anti-union campaign when faced with an organizing effort, which was set out in Section IV. E. above. The Department is aware of no data set that will reflect all instances in which a labor consultant will engage in reportable persuader activity and that there is no ready proxy for estimating the use of employer consultants in contexts other than in election cases, such as employer efforts to persuade employees during collective bargaining, a strike, or other labor dispute. The Department believes, however, that the number of representation and decertification elections supervised by the National Labor Relations Board (NLRB) and the National Mediation Board (NMB), the agencies that enforce private sector labor-management relations statutes, provides an appropriate benchmark for estimating the number of reports that will be filed under the proposed rule. The Department invites comment on this approach.

In order to estimate the number of Form LM-20 reports involving agreements and arrangements to persuade employees, the Department applied the 75% employer utilization rate of consultants to data from the NLRB and NMB. As shown above in Section IV. F., the NLRB received 3,429.2 representation cases in during the fiscal years 2005-2009.²⁸ The NMB handled an average of 38.8 representation cases in during the same period.²⁹ Applying the 75% figure to 3,468 (the combined NLRB and NMB representation case total), results in 2,601 Form LM-20 reports. The Department then subtracted out the 191 reports estimated in the Department's most recent ICR submission to the OMB, which results in a Form LM-20 report increase of 2,410.

The Department therefore estimates that the proposed Form LM-20 will generate 2,601 reports, which is an increase of 2,410 over the previous estimate. The Department notes that, pursuant to the terms of the statute and the instructions to the form, sub-consultants who enter into agreements to aid the consultant in its efforts to persuade the employer's employees, are

also required to submit Form LM-20 reports. Furthermore, it is possible that an employer could enter into reportable agreements with multiple consultants during an anti-union organizing effort. However, the Department assumes in its estimate that most employers will hire one consultant for each representational or decertification election. The Department invites comment on this assumption, including any data on the use of sub-consultants and multiple agreements or arrangements entered into by employers.

b. Form LM-10 Total Filer Estimate

The Department estimates 3,414 proposed Form LM-10 filers, for a total increase of 2,484 over the average of 930 Form LM-10 reports received during FY 2007 and FY 2008. The Form LM-10 analysis follows the above analysis, although the form has other aspects that are not affected by today's rule. Specifically, an employer must report certain payments to unions and union officials pursuant to section 203(a)(1), as well as other persuader and information gathering related payments pursuant to section 203(a)(2) and 202(a)(3). For these portions of the Form LM-10, the Department utilized data obtained from a review of Form LM-10 submissions in FY 2007 and FY 2008. This analysis revealed that, for the two year period, there were 1,616 forms that revealed information reported pursuant to section 203(a)(1), six reports pursuant to section 203(a)(2), and three for section 203(a)(3). Further, there were a total of 233 Form LM-10 reports filed pursuant to sections 202(a)(4) and (5).

The Department assumes for this calculation that each Form LM-10 report submitted will involve just one of the above statutory provisions, although in practice there may be some overlap. Thus, the Department combines the estimated 2,601 agreements and arrangements, calculated for the Form LM-20, with 813 (the average number of Form LM-10 reports in the above two year period indicating that the forms were submitted pursuant to sections 203(a)(1)-(3), the non-consultant agreement or arrangement provisions). This yields a total estimate of 3,414 proposed Form LM-10 reports, which represents a 2,484 increase over the average of 930 Form LM-10 reports received during FY 2007 and FY 2008.

As part of this proposed Form LM-10 estimate, the Department notes that the issues of the number of agreements or arrangements that an employer makes with third parties, as well as the number of potential sub-consultants, are not relevant here, as any number of agreements or arrangements entered into

will be reported on one Form LM-10 report per employer.

2. Hours To Complete and File the Proposed Form LM-20 and Form LM-10

The Department has estimated the number of minutes that each Form LM-20 and Form LM-10 filer will need for completing and filing the proposed forms (reporting burden), as well as the minutes needed to track and maintain records necessary to complete the forms (recordkeeping burden). The estimates for the Form LM-20 are included in Tables 1 and 2, and the estimates for the Form LM-10 are included in Tables 3 and 4. The tables describe the information sought by the proposed forms and instructions, where on each form the particular information is to be reported, if applicable, and the amount of time estimated for completion of each item of information. The estimates for the reporting burden associated with completing certain items of the forms and reading the instructions, as well as the related recordkeeping requirements, are based on similar estimates utilized in the recent Form LM-30 Labor Organization Officer and Employee Report rulemaking, pursuant to section 202 of the LMRDA. While the information required to be reported in that form differs from the Form LM-10 and LM-20, and union officers differ from attorneys who complete the employer and consultant forms, the similarities in the forms, particularly the information items and length of the instructions, provide a reasonable basis for these estimates.

Further, the estimates include the time associated with gathering documentation and any work needed to complete the forms. For example, the estimates include reading the instructions, gathering relevant documentation and information, and checking the appropriate persuader or information supplying activities boxes. The Department also notes that there are no calculations required for the Form LM-20, as it does not require the reporting of financial transactions (although Item 10, Terms and Conditions, requires reporting of aspects related to rate of consultant pay). The aspect of the Form LM-10 affected by this rulemaking, concerning the details of persuader agreements, requires the reporting disbursements made to the consultant, without any calculations.

Additionally, the estimates below are for all filers, including first-time filers and subsequent filers. While the Department considered separately estimating burdens for first-time and subsequent filers, the nature of Form

²⁸ See 2009 NLRB Annual Report, Table 1 at 91: http://www.nlr.gov/shared_files/Annual_Reports/NLRB2009.pdf.

²⁹ See 2009 NMB Annual Report, Table 1 at 79 at: <http://www.nmb.gov/documents/2009annual-report.pdf>.

LM-20 and Form LM-10 reporting militates against such a decision. Employers, labor relations consultants, and others may not be required to file reports for multiple fiscal years. In those cases in which the Department has reduced burden estimates for subsequent-year filings, it generally did so with regard to annual reports, specifically labor organization annual reports, Forms LM-2, LM-3, and LM-4. In contrast, the Form LM-20 and Form LM-10, like the Form LM-30, is only required for employers, labor relations consultants, and other filers in years that they engage in reportable transactions. As such, the burden estimates assume that the filer has never before filed a Form LM-20 or Form LM-10.

a. Recordkeeping Burden Hours To Complete the Form LM-20

The recordkeeping estimate of 15 minutes per filer represents a 13 minute increase from the 2 minute estimate for the current Form LM-20, as prepared for the Department's most recent information collection request for OMB #1215-0188. See also the current Form LM-20 and instructions. This estimate reflects the Department's reevaluation of the effort needed to document the nature of the agreement or arrangement with an employer, as well as the types of activities engaged in pursuant to such agreement or arrangement. Additionally, the Department assumes that consultants retain most of the records needed to complete the form in the normal course of their business. Finally, the 15 minutes accounts for the 5-year retention period required by statute. See section 206, 29 U.S.C. 436.

b. Reporting Burden Hours for the Form LM-20

The reporting burden of 45 minutes per filer represents a 25 minute increase from the 20 minute estimate for the current Form LM-20, as prepared for the Department's most recent information collection request for OMB #1215-0188. See also the current Form LM-20 and instructions. This estimate reflects the Department's reevaluation of the effort needed to record the nature of the agreement or arrangement with an employer, as well as the types of activities engaged in pursuant to such agreement or arrangement. It also includes the time required to read the Form LM-20 instructions to discover whether or not a report is owed and determine the correct manner to report the necessary information. The Department estimates that the average filer will need 10 minutes to read the instructions, which includes the time needed to apply the Department's proposed revised interpretation of the "advice exemption."³⁰

The Department views the simple data entries required by Items 1.a through 1.c, 4, 5, 7, and 11b-c as only requiring 30 seconds each. These items only require simple data entry regarding dates or file numbers, checking boxes, or, in the case of 11.c, a simple answer regarding the extent or performance for the activities undertaken pursuant to the agreement or arrangement. Additionally, Item 9 includes two boxes to check identifying generally the nature of the activities performed, so the Department estimates that this item will require one minute to complete. The Department estimates that a filer will be able to enter his or her own contact information in only two minutes, including its Employer Identification Number (EIN), if applicable, in Item 2, as well as two minutes for any additional contact

information in Item 3. Further, the filer will require two minutes to record in Item 8(a) or Item 8(b) the names of the employer's representatives or officials of the prime consultant with whom the filer entered into the agreement or arrangement, as well as two minutes to identify in Item 11.d the individuals who carried out the activities for the employer. The filer will need four minutes, however, to enter the information for the employer in Item 6, including the EIN, if applicable, as this information may not be as readily available as the filer's own.

The Department estimates that it will take filers five minutes to describe in Item 10 in narrative form the nature of the agreement or arrangement, as well as attach the written agreement (if applicable), and five minutes to complete the checklist in Item 11.a, which illustrates the nature of the activities undertaken pursuant to the agreement or arrangement. It will also take one minute each for Items 12.a and 12.b, in order to identify the subject group of employee(s) and organization(s).

Finally, the Department estimates that a Form LM-20 filer will utilize five minutes to check responses and review the completed report, and will require one minute per official to sign and verify the report in Items 13 and 14 (for two minutes total for these two items). The Department introduced in calendar year 2010 a cost-free and simple electronic filing and signing protocol, which will reduce burden on filers.

As a result, the Department estimates that a filer of the proposed revised Form LM-20 will incur 60 minutes in reporting and recordkeeping burden to file a complete form. This compares with the 22 minutes per filer in the currently approved information collection request. See Table 1 below.

TABLE 1—FORM LM-20 FILER RECORDKEEPING AND REPORTING BURDEN
[In minutes]

Burden description	Section of proposed form	Recurring burden hours
Maintaining and gathering records	Recordkeeping Burden	15 minutes.
Reading the instructions to determine applicability of the form and how to complete it.	Reporting Burden	10 minutes.
Reporting LM-20 file number	Item 1.a	30 seconds.
Identifying if report filed under a Hardship Exemption	Item 1.b	30 seconds. ³¹
Identifying if report is amended	Item 1.c	30 seconds. ³²
Reporting filer's contact information	Item 2	2 minutes.
Identifying Other Address Where Records Are Kept	Item 3	2 minutes.

³⁰ Additionally, the Department estimates that those persons who are not required to file the Form LM-20 will spend ten minutes reading the instructions. This burden is not included in the total reporting burden, since these persons do not file and are thus not respondents.

³¹ The Department includes this item and an estimated time of completion in an effort to provide a thorough burden analysis. However, the Department does not consider it likely that this item will need to be competed, so it has not been included in the total below.

³² The Department includes this item and an estimated time of completion in an effort to provide a thorough burden analysis. However, the Department does not consider it likely that the average filer will need to complete this item, so it has not been included in the total below.

TABLE 1—FORM LM-20 FILER RECORDKEEPING AND REPORTING BURDEN—Continued
[In minutes]

Burden description	Section of proposed form	Recurring burden hours
Date Fiscal Year Ends	Item 4	30 seconds.
Type of Person	Item 5	30 seconds.
Full Name and Address of Employer	Item 6	4 minutes.
Date of Agreement or Arrangement	Item 7	30 seconds.
Person(s) Through Whom Agreement or Arrangement Made	Items 8(a) and (b)	2 minutes.
Object of Activities	Item 9	1 minute.
Terms and Conditions	Item 10	5 minutes.
Nature of Activities	Item 11.a	5 minutes.
Period During Which Activity Performed	Item 11.b	30 seconds.
Extent of Performance	Item 11.c	30 seconds.
Name and Address of Person Through Whom Performed	Item 11.d	2 minutes.
Identify the Subject Group of Employee(s)	Item 12.a	1 minute.
Identify the Subject Labor Organization(s)	Item 12.b	1 minute.
Checking Responses	N/A	5 minutes.
Signature and verification	Items 13-14	2 minutes.
Total Recordkeeping Burden Hour Estimate per Form LM-20 Filer .....	.....	15 minutes.
Total Reporting Burden Hour Estimate per Form LM-20 Filer .....	.....	45 minutes.
<i>Total Burden Estimate per Form LM-20 Filer .....</i>	.....	<i>60 minutes.</i>

c. Total Form LM-20 Reporting and Recordkeeping Burden

As stated, the Department estimates that the burden of maintaining and gathering records is 15 minutes and that it will receive 2,601 proposed Form LM-20 reports. Thus, the estimated recordkeeping burden for all filers is 39,015 minutes (15 × 2,601 = 39,015 minutes) or approximately 650 hours (39,015/60 = 650.25). The remaining times (45 minutes) represents the burden involved with reviewing the instructions and reporting the data. The total estimated reporting burden for all filers is 117,045 minutes (45 × 2,601 = 117,045 minutes) or approximately 1,951 hours (117,045/60 = 1,950.75 hours). The total estimated burden for all filers is, therefore, 156,060 minutes or 2,601 hours (650 + 1,951 = 2,601). See Table 2 below.

The total recordkeeping of 650 hours represents a 644.27 hour increase over the 5.73 hours Form LM-20 recordkeeping estimate presented in the Department's most recent ICR submission to OMB, and the total reporting burden of 1,951 hours represents a 1887.97 hour increase over the 63.03 hours Form LM-20 reporting burden estimate presented in the ICR submission. The total burden of 2,601 hours is a 2,532 hour increase over the estimated 69 hours Form LM-20 burden total in the most recent ICR submission.

TABLE 2—TOTAL REPORTING AND RECORDKEEPING BURDEN FOR THE ESTIMATED 2,601 FORM LM-20 FILERS

[In hours]	
Total Recordkeeping Burden	650
Total Reporting Burden	1,951
Total Burden	2,601

d. Recordkeeping Burden Hours To Complete the Form LM-10

The recordkeeping estimate of 25 minutes per filer represents a 20 minute increase from the 5 minute estimate for the current Form LM-10, as prepared for the Department's most recent information collection request for OMB #1215-0188. See also the current Form LM-10 and instructions. This estimate reflects the Department's reevaluation of the effort needed to document the nature of the agreement or arrangement with an employer, as well as the types of activities engaged in pursuant to such agreement or arrangement. The Department assumes that employers retain most of the records needed to complete the form in the ordinary course of their business. Furthermore, the 15 minutes accounts for the 5-year retention period required by statute. See section 206, 29 U.S.C. 436. Finally, the Department notes that the estimate for the Form LM-10 recordkeeping burden is 10 minutes longer than that for the Form LM-20, which reflects the greater amount of information reported on the Form LM-10.

e. Reporting Burden Hours To Complete the Form LM-10

In proposing these estimates, the Department is aware that not all employers required to file the Form LM-10 will need to complete each Part of the form. However, for purposes of assessing an average burden per filer, the Department assumes that the Form LM-10 filer engages in reportable transactions, agreements, or arrangements in all four of the proposed parts.

The reporting burden of 120 minutes per filer represents an 85 minute increase from the 35 minute estimate for the current Form LM-10, as prepared for the Department's most recent information collection request for OMB #1215-0188. See also the current Form LM-10 and instructions. This estimate reflects the Department's reevaluation of the effort needed to record the nature of the agreement or arrangement with a consultant and the types of activities engaged in pursuant to such agreement or arrangement, as well as record and enter each reportable payment or expenditure. It also includes the time required to read the Form LM-10 instructions to discover whether or not a report is owed and determine the correct manner to report the necessary information. The Department estimates that the average filer will need 20 minutes to read the instructions, which includes the time needed to apply the Department's proposed revised interpretation of the "advice"

exemption.³³ This estimate is ten minutes greater than for the Form LM-20 instructions, as the Form LM-10 is a more complex report.

The Department estimates, as with the Form LM-20, that it will take 30 seconds to complete each item that calls for entering dates, checking appropriate boxes, as well as entering the amount of a payment or expenditure and its type (see Items 1.a, 1.b, 1.c, 2, 6, 7, 9.a, 9.b, 9.c, 11.a, 11.b, 11.c, 13.a, 14.b, 15.a, 15.b, 15.c, 17.a, 17.b, and 17.c). Additionally, Parts C and D call for checking multiple boxes, which the Department also estimates will take 30 seconds each, or one minute for Part C and Part D, respectively.

The Department also estimated that it would take one minute to identify the employee and labor organization target

of persuader activities, as well as indicating the extent to which the activities have been performed (see Items 14.c, 14.e, 14.f, respectively).

Further, the Department estimates, as with the Form LM-20, that it will take two minutes for the employer to complete items calling for its own identifying information (see Items 3-5 and 14.d), including its EIN, if applicable and four minutes for items calling for another's identifying information, including EIN, if applicable (see Items 8, 10, 12, 14.d, and 16). The Department also estimates that it will take five minutes to detail the circumstances of each payment or expenditure, terms and conditions of any agreement or arrangement, and any activities pursuant to such agreement or

arrangement (see Items 9.d, 11.d, 13.b, 14.a, 15.d, and 17.d).

Finally, the Department estimates that a Form LM-10 filer will utilize five minutes to check responses and review the completed report, and will require one minute per official to sign and verify the report in Items 18 and 19 (for two minutes total for these two items). The Department introduced in calendar year 2010 a cost-free and simple electronic filing and signing protocol, which will reduce burden on filers.

As a result, the Department estimates that a filer of the proposed revised Form LM-10 will incur 120 minutes in reporting and recordkeeping burden to file a complete form. This compares with the 35 minutes per filer in the currently approved information collection request. See Table 3 below.

TABLE 3—FORM LM-10 FILER RECORDKEEPING AND REPORTING BURDEN
[In minutes]

Burden description	Section of proposed form	Recurring burden hours
Maintaining and gathering records	Recordkeeping Burden	25 minutes.
Reading the instructions to determine applicability of the form and how to complete it.	Reporting Burden	20 minutes.
Reporting LM-10 file number	Item 1.a	30 seconds.
Identifying if report filed under a Hardship Exemption	Item 1.b	30 seconds. ³⁴
Identifying if report is amended	Item 1.c	30 seconds. ³⁵
Fiscal Year Covered	Item 2	30 seconds.
Reporting employer's contact information	Item 3	2 minutes.
Reporting president's contact information if different than 3	Item 4	2 minutes.
Identifying Other Address Where Records Are Kept	Item 5	2 minutes.
Identifying where records are kept	Item 6	30 seconds.
Type of Organization	Item 7	30 seconds.
Reporting union or union official's contact information (Part A)	Item 8	4 minutes.
Date of Part A payments	Item 9.a	30 seconds.
Amount of Part A payments	Item 9.b	30 seconds.
Kind of Part A payments	Item 9.c	30 seconds.
Explaining Part A payments	Item 9.d	5 minutes.
Identifying recipient's name and contact information	Item 10	4 minutes.
Date of Part B payments	Item 11.a	30 seconds.
Amount of Part B payments	Item 11.b	30 seconds.
Kind of Part B payments	Item 11.c	30 seconds.
Explaining Part B payments	Item 11.d	5 minutes.
Part C: Identifying object(s) of the agreement or arrangement	Part C	1 minute.
Identifying name and contact information for individual with whom agreement or arrangement was made.	Item 12	4 minutes.
Indicating the date of the agreement or arrangement	Item 13.a	30 seconds.
Detailing the terms and conditions of agreement or arrangement	Item 13.b	5 minutes.
Identifying specific activities to be performed	Item 14.a	5 minutes.
Identifying period during which performed	Item 14.b	30 seconds.
Identifying the extent performed	Item 14.c	1 minute.
Identifying name of person(s) through whom activities were performed	Item 14.d	2 minutes.
Identify the Subject Group of Employee(s)	Item 14.e	1 minute.
Identify the Subject Labor Organization(s)	Item 14.f	1 minute.
Indicating the date of each payment pursuant to agreement or arrangement	Item 15.a	30 seconds.
Indicating the amount of each payment	Item 15.b	30 seconds.
Indicating the kind of payment	Item 15.c	30 seconds.
Explanation for the circumstances surrounding the payment(s)	Item 15.d	5 minutes.
Part D: Identifying purpose of expenditure(s)	Part D	1 minute.
Part D: Identifying recipient's name and contact information	Item 16	4 minutes.
Date of Part D payments	Item 17.a	30 seconds.
Amount of Part D payments	Item 17.b	30 seconds.
Kind of Part D payments	Item 17.c	30 seconds.
Explaining Part D payments	Item 17.d	5 minutes.

³³ Additionally, the Department estimates that those persons who are not required to file the Form

LM-10 will spend ten minutes reading the instructions. This burden is not included in the

total reporting burden, since these persons do not file and are thus not respondents.

TABLE 3—FORM LM-10 FILER RECORDKEEPING AND REPORTING BURDEN—Continued
[In minutes]

Burden description	Section of proposed form	Recurring burden hours
Checking Responses	N/A	5 minutes.
Signature and verification	Items 18-19	2 minutes.
Total Recordkeeping Burden Hour Estimate Per Form LM-10 Filer .....	.....	25 minutes.
Total Reporting Burden Hour Estimate Per Form LM-10 Filer .....	.....	95 minutes.
Total Burden Estimate per Form LM-10 Filer .....	.....	120 minutes.

f. Total Form LM-10 Reporting and Recordkeeping Burdens

As stated, the Department estimates that it will receive 3,414 proposed Form LM-10 reports. Thus, the estimated recordkeeping burden for all filers is 85,350 minutes (25 × 3,414 = 85,350 minutes) or approximately 1,423 hours (85,350/60 = 1,422.5). The total estimated reporting burden for all filers is 324,330 minutes (95 × 3,414 = 324,330 minutes) or approximately 5,406 hours (324,330/60 = 5,405.5 hours).

The total estimated burden for all filers is, therefore, approximately 409,680 minutes or 6,828 hours. See Table 4 below. The total recordkeeping of 1,423 hours represents a 1,347.96 hour increase over the 75.04 hour Form LM-10 recordkeeping estimate presented in the Department's most recent ICR submission to OMB, and the total reporting burden of 5,406 hours represents a 4,937 hour increase over the 469 hour Form LM-10 reporting burden estimate presented in the ICR request. The total burden of 6,829 hours is a 6,285 hour increase over the 544 hour Form LM-10 burden hour total in the most recent ICR submission.

TABLE 4—TOTAL REPORTING AND RECORDKEEPING BURDEN FOR THE ESTIMATED 3,414 FORM LM-10 FILERS

[In hours]	
Total Recordkeeping Burden	1,423
Total Reporting Burden	5,406
Total Burden	6,829

³⁴ The Department includes this item and an estimated time of completion in an effort to provide a thorough burden analysis. However, the Department does not consider it likely that this item will need to be completed, so it has not been included in the total below.

³⁵ The Department includes this item and an estimated time of completion in an effort to provide a thorough burden analysis. However, the Department does not consider it likely that the average filer will need to complete this item, so it has not been included in the total below.

3. Cost of Submitting the Form LM-20 and Form LM-10

The total cost imposed by the proposed rule on Form LM-20 and Form LM-10 filers is \$825,886.11. See Table 5 below. This is a \$801,508.11 increase over the \$24,378 estimated for the two forms in the most recent ICR submission.

a. Form LM-20

To determine the cost per filer to submit the Form LM-20, the Department assumed that each filer would utilize the services of an attorney to complete the form. This is consistent with past calculations of costs per filer for the Form LM-20, and the assumption also corresponds to the analysis above in which the Department notes that the consultant industry consists in large part of practicing attorneys. The Department also considers non-attorney consultant firms as likely utilizing the services of attorneys to complete the form.

To determine the hourly compensation for attorneys for the purposes of this analysis, the Department first identified the average hourly salary for lawyers, \$62.03, as derived from the Occupational Employment and Wages Survey for 2009, Table 1 on page 10, from the Bureau of Labor Statistics (BLS) at <http://www.bls.gov/news.release/pdf/ocwage.pdf>. Next, the Department increased these figures by 41.2% to account for total compensation.³⁶ Thus, the Department adjusted the \$62.03 figure upwards by 41.2% to reach the average hourly compensation for attorneys for the purposes of this analysis: \$87.59.

Applying this hourly total compensation to the estimated one hour reporting and recordkeeping burden, yields an estimated cost of \$87.59

³⁶ See Employer Costs for Employee Compensation Summary, from the BLS, at <http://www.bls.gov/news.release/ecec.nr0.htm>. The Department increased the average hourly wage rate for employees (\$19.41 in 2009) by the percentage total of the average hourly compensation figure (\$8.00 in 2009) over the average hourly wage.

(\$87.59 × one hour) per filer. This is \$80.29 greater than the \$7.30 estimate in the most recent ICR submission. The total cost for the estimated 2,601 Form LM-20 filers is therefore \$227,821.59, which is \$226,427.59 greater than the \$1,394 total burden estimate for the Form LM-20 in the most recent ICR submission.

b. Form LM-10

As with the Form LM-20 calculation above, the Department assumed that each filer would utilize the services of an attorney to complete the form. This is consistent with past calculations of costs per filer for the Form LM-10. The Department also considers that consultant firms are likely utilizing the services of attorneys to complete the form.

Applying this hourly total compensation to the estimated two hour reporting and recordkeeping burden, yields an estimated cost of \$175.18 (\$87.59 × two hours) per filer. This is \$150.68 greater than the estimated \$24.50 Form LM-10 burden presented in the most recent ICR submission. The total cost for the estimated 3,414 Form LM-10 filers is therefore \$598,064.52, which is \$575,080.52 greater than the \$22,984 estimated for the most recent ICR submission.

c. Federal Costs

In its recent submission for revision of OMB #1215-0188, which contains all LMRDA forms (except the pre-2007 Form LM-30, which was approved under OMB #1215-0205), the Department estimates that its costs associated with the LMRDA forms are \$2,710,726 for the OLMS national office and \$3,779,778 for the OLMS field offices, for a total Federal cost of \$6,490,504. Federal estimated costs include costs for contractors and operational expenses such as equipment, overhead, and printing as well as salaries and benefits for the OLMS staff in the National Office and field offices who are involved with reporting and disclosure activities. These estimates include time devoted

to: (a) Receipt and processing of reports; reviewing reports; (e) obtaining providing compliance assistance
 (b) disclosing reports to the public; (c) amended reports if reports are training on recordkeeping and reporting
 obtaining delinquent reports; (d) determined to be deficient; and (f) requirements.

TABLE 5—REPORTING AND RECORDKEEPING BURDEN HOURS AND COSTS FOR FORM LM-20 AND FORM LM-10

Number of filers per form	Reporting hours per filer	Total reporting hours	Recordkeeping hours per filer	Total record-keeping hours	Total burden hours per filer	Total burden hours	Average cost per filer	Total cost
Form LM-20: 2,601	0.75	1,950.75	0.25	650.25	1.00	2,601	\$87.59	\$227,821.59
Form LM-10: 3,414	1.5833	5,406	0.4166	1,423	2.00	6,829	175.18	598,064.52
Total								825,886.11

5. Request for Public Comment

Currently, the Department is soliciting comments concerning the information collection request (“ICR”) for the information collection requirements included in this proposed regulation at section 405.2, Annual report, and at section 406.2, Agreement and activities report, of title 29, Code of Federal Regulations, which, when implemented will revise the existing OMB control number 1245-0003. A copy of this ICR, with applicable supporting documentation, including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Andrew R. Davis at (202) 693-0123. Please note that comments submitted in response to this notice will be made a matter of public record.

The Department hereby announces that it has submitted a copy of the proposed regulation to the Office of Management and Budget (“OMB”) in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., by permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection.

Agency: Office of Labor-Management Standards.

Title: Labor Organization and Auxiliary Reports.

OMB Number: 1245-0003.

Affected Public: Private Sector: employers and labor relations consultants.

Number of Annual Responses: 38,570.

Frequency of Response: Annual for most forms.

Estimated Total Annual Burden Hours: 4,420,458.

Estimated Total Annual Burden Cost: \$185,719,212.

Potential respondents are hereby duly notified that such persons are not required to respond to a collection of information or revision thereof unless approved by OMB under the PRA and it displays a currently valid OMB control number. See 35 U.S.C. 3506(c)(1)(B)(iii)(V). In accordance with 5 CFR 1320.11(k), the Department will publish a notice in the **Federal Register** informing the public of OMB’s decision with respect to the ICR submitted thereto under the PRA.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make initial analyses available for public comment. 5 U.S.C. 603, 604. If an agency determines that its rule will not have a significant economic impact on a substantial number of small entities, it must certify that conclusion to the Small Business Administration (SBA). 5 U.S.C. 605(b).

1. Statement of the Need for, and Objectives of, the Proposed Rule

See Paperwork Reduction Act, section A, which is incorporated here by reference.

2. Legal Basis for Rule

The legal authority for this proposed rule is section 208 of the LMRDA. 29 U.S.C. 438. Section 208 provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under title II of the Act, and such other reasonable rules and regulations as she may find necessary to prevent the circumvention or evasion of the reporting requirements. 29 U.S.C. 438.

3. Number of Small Entities Covered Under the Proposal

The Department estimates that there are approximately 2,549 small entities affected by the Form LM-20 portion of the proposed rule and 3,404 employers, for a total of 5,953 small entities affected by the proposed rule.

To determine the number of labor relations consultants and similar entities affected by the Form LM-20 portion of the proposed rule, which can be classified as small entities, the Department analyzed data from the U.S. Census Bureau’s North American Industry Classification System Codes (NAICS) for “Human Resources Consulting Services,” which includes “Labor Relations Consulting Services.”³⁷ Additionally, the Department utilized the Small Business Administration’s (“SBA”) “small business” standard of \$7 million in average annual receipts for “Human Resources Consulting Services,” NAICS code 541612.³⁸

A review of the above data reveals that there are 13,575 firms within the “Human Resources Consulting Services” NAICS category, with 13,307

³⁷ See Statistics of U.S. Businesses: 2007: NAICS 541612—Human resources & executive search consulting services, United States, accessed at: <http://www.census.gov/econ/subs/>.

³⁸ See U.S. Small Business Administration’s Table of Small Business Size Standards Matched to the North American Industry Classification System Codes at 32, accessed at: http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_std_tablepdf.pdf.

of them (approximately 98% of the total) with less than \$7 million in payroll. *See, supra*, Statistics of U.S. Businesses: 2007: NAICS 541612. The Department notes that labor relations consultants are a subset of the total of the “Human Resources Consulting Category,” and that total annual receipts of the firms is undoubtedly greater than the total payroll figure listed in the NAICS. However, based on the best available data, the Department has employed the 98% figure to determine the estimated percentage of 2,601 labor relations consultants that qualify as small entities pursuant to the proposed rule. Thus, the Department estimates that there are approximately 2,549 small entities ($2,601 \times 0.98$) affected by the Form LM-20 portion of the proposed rule.

To determine the number of employers that can be classified as small entities, pursuant to the Form LM-10 portion of the proposed rule, the Department notes that the SBA considers 99.7 percent of all employer firms to qualify as small entities.³⁹ Further, the proposed rule affects all private sector employers. Thus, the Department concludes that approximately 3,404 ($3,414 \times 0.997$) of the employers affected by the proposed rule constitute small entities.

4. Relevant Federal Requirements Duplicating, Overlapping or Conflicting With the Rule

The Department is not aware of any other Federal requirements requiring reporting of the activities, agreements, and arrangements covered by this proposed rule.

5. Differing Compliance or Reporting Requirements for Small Entities

Under the proposed rule, the Form LM-20 reporting and recordkeeping requirements apply equally to all persons required to file a Form LM-20, and the Form LM-10 reporting and recordkeeping requirements apply equally to all employers covered under the LMRDA.

6. Clarification, Consolidation and Simplification of Compliance and Reporting Requirements for Small Entities

The revised format of the Form LM-10, which organizes the material in a more user-friendly manner, will simplify filing by small entity employers. Furthermore, the addition of instructions regarding the “advice” exemption into the Form LM-20 and

Form LM-10 instructions will improve the ease of filing.

OLMS will provide compliance assistance for any questions or difficulties that may arise from using the electronic filing system. A toll-free help desk is staffed during normal business hours and can be reached by telephone at 1-866-401-1109.

7. Steps Taken To Reduce Burden

The Department proposes that Form LM-10 and LM-20 filers submit reports electronically. Currently, labor organizations that file the Form LM-2 Labor Organization Annual Report are required by regulation to file electronically, and there has been good compliance with these requirements. The Department reasonably expects that employers and consultants will have the information technology resources and capacity to file electronically, as well.

The use of electronic forms helps reduce burden by making it possible to download information from previously filed reports directly into the form; enables most schedule information to be imported into the form; makes it easier to enter information; and automatically performs calculations and checks for typographical and mathematical errors and other discrepancies, which assists reporting compliance and reduces the likelihood that the filer will have to file an amended report. The error summaries provided by the electronic system, combined with the speed and ease of electronic filing, also make it easier for both the reporting organization and OLMS to identify errors in both current and previously filed reports and to file amended reports to correct them.

Moreover, a simplified electronic filing option is also planned for all LMRDA reports as part of an information technology enhancement, including for those forms that cannot currently be filed electronically, such as the Form LM-10 and Form LM-20. This addition should greatly reduce the burden on filers to electronically sign and submit their forms. Further, for those filers unable to submit electronically, they will be permitted to apply for a continuing hardship exemption that permits filers to submit hardcopy forms.

8. Reporting, Recording and Other Compliance Requirements of the Rule

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities. The LMRDA is primarily a reporting and disclosure statute. Accordingly, the primary economic impact will be the cost of retaining and reporting required

information. It establishes various reporting requirements for employers, labor relations consultants, and others, pursuant to Title II of the Act. Accordingly, the primary economic impact of the proposed rule will be the cost to reporting entities of compiling, recording, and reporting required information.

The Regulatory Flexibility Act does not define either “significant economic impact” or “substantial” as it relates to the number of regulated entities. 5 U.S.C. 601. In the absence of specific definitions, “what is ‘significant’ or ‘substantial’ will vary depending on the problem that needs to be addressed, the rule’s requirements, and the preliminary assessment of the rule’s impact.” *See* SBA’s Office of Advocacy, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act at 17.⁴⁰ As to economic impact, one important indicator is the cost of compliance in relation to revenue of the entity. *Id.*

As noted above, the Department estimates that there are approximately 2,549 labor relations consultants and other entities with under \$7 million in total annual revenue, thus constituting small entities. Further, the Department estimated that there are 3,404 employer small entities, for a total of 5,953 small entities affected by the proposed rule. As noted in the PRA analysis, *supra*, the Department estimated that a Form LM-20 filer would spend \$87.59 completing the form, while a Form LM-10 filer would spend \$175.18. The average firm within the “Human Resources and Consulting Services” NAICS category spends \$780,297 on payroll, and the average firm with between 1 and 4 employees spends \$109,394 on payroll. *See, supra*, Statistics of U.S. Businesses: 2007: NAICS 541612. The estimated cost of preparing and submitting a Form LM-20 represents approximately one tenth of one percent (0.0112% or \$87.59/\$780,297) of the total annual payroll of a small entity in this NAICS category, which would be an even smaller percentage of total revenue. Further, the estimated cost represents approximately 0.08% (\$87.59/\$109,394) of the total payroll for firms in this NAICS category with between one and four employees.

For all employers, the average payroll cost is \$722,757.70, and for employers with between one and four employees, the average payroll cost is \$59,723.88. *See* U.S. Census Bureau, Statistics about Business Size (including Small Business), Table 2a. Employment Size of

³⁹ See <http://web.sba.gov/faqs/faqIndexAll.cfm?areaid=24>.

⁴⁰ The Guide may be accessed at <http://www.sba.gov/advo/laws/rfaguide.pdf>.

Employer and Nonemployer Firms, 2004, at <http://www.census.gov/epcd/www/smallbus.html>. The cost of completing the Form LM-10, \$175.18, represents only, approximately, 0.02% and 0.29%, respectively for the above two categories (\$175.18/\$722,757.70 and \$175.18/\$59,723.88). The Department thus concludes that this economic impact is not significant, as that term is employed for the purpose of this analysis.

The Department estimates that there are approximately 2,549 small entities affected by the Form LM-20 portion of the proposed rule and 3,404 employers, for a total of 5,953 small entities affected by the proposed rule. Based on the compliance cost calculations above, the Department concludes that the proposed rule will not have a significant economic impact on a substantial number of these small entities. Therefore, under 5 U.S.C. 605, the Department certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Electronic Filing of Forms and Availability of Collected Data

Appropriate information technology is used to reduce burden and improve efficiency and responsiveness. The Form LM-20 and Form LM-10 reports now in use can be accessed and completed at the OLMS Web site. OLMS has implemented a system enabling

such filers to submit forms electronically with electronic signatures.

The OLMS Online Disclosure Web site at <http://www.unionreports.gov> is available for public use. The Web site contains a copy of each Form LM-20 and Form LM-10 report for reporting years 2000 and thereafter, as well as an indexed computer database of the information in each report that is searchable through the Internet.

Information about this system can be obtained on the OLMS Web site at <http://www.olms.dol.gov>.

List of Subjects

29 CFR Part 405

Labor management relations, Reporting and recordkeeping requirements.

CFR Part 406

Labor management relations, Reporting and recordkeeping requirements.

Accordingly, for the reasons provided above, the Department proposes to amend parts 405 and 406 of Title 29, Chapter IV of the Code of Federal Regulations as set forth below:

PART 405—EMPLOYER REPORTS

1. The authority citation for part 405 is revised to read as follows:

Authority: Labor-Management Reporting and Disclosure Act Secs. 203, 207, 208, 73

Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 08-2009, 74 FR 58835 (Nov. 13, 2009).

2. Section 405.5 is amended by remove the phrase "the second paragraph under the instructions for Question 8A of Form LM-10" and adding in its place "the instructions for Part A of the Form LM-10".

3. Section 405.7 is amended by remove the phrase "Question 8C of Form LM-10" and adding in its place "Part D of the Form LM-10".

PART 406—REPORTING BY LABOR RELATIONS CONSULTANTS AND OTHER PERSONS, CERTAIN AGREEMENTS WITH EMPLOYERS

4. The authority citation for part 406 is revised to read as follows:

Authority: Labor-Management Reporting and Disclosure Act Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 08-2009, 74 FR 58835 (Nov. 13, 2009).

Signed in Washington, DC, this 6th day of June 2011.

John Lund,

Director, Office of Labor-Management Standards.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices: Proposed Forms and Instructions

BILLING CODE 4510-CP-P

FORM LM-20 – AGREEMENT & ACTIVITIES REPORT

OMB No. XXXX-XXXX. Expires XX-XX-XXXX.

IMPORTANT: This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440. Required of persons, including Labor Relations Consultants and Other Individuals and Organizations, under Section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA).

Office of Labor-Management Standards
U.S. Department of Labor

OLMS

For Official Use Only E

► Read the instructions carefully before completing this report. ◀

1.a. File Number: C-	1.b. <input type="checkbox"/> Hardship Exemption	1.c. <input type="checkbox"/> Amended Report
2. Contact information for person filing: Name _____ Title _____ Organization _____ Street _____ City _____ State _____ ZIP Code _____ Email Address _____ Employer Identification Number (EIN) _____	3. Other address where records necessary to verify this report are kept: Name _____ Title _____ Organization _____ Street _____ City _____ State _____ ZIP Code _____ Email Address _____	
4. Date fiscal year ends _____ mm/dd/yyyy	5. Type of person a. <input type="checkbox"/> Individual b. <input type="checkbox"/> Partnership c. <input type="checkbox"/> Corporation d. <input type="checkbox"/> Other [specify]	
6. Full name and address of employer with whom agreement or arrangement was made: Name _____ Title _____ Organization _____ Street _____ City _____ State _____ ZIP Code _____ Email Address _____ Employer Identification Number (EIN) _____	7. Date agreement or arrangement entered into: _____ mm/dd/yyyy	
	8. Person(s) through whom agreement or arrangement made: (a) Employer Representative: Name and Title _____ (b) Prime Consultant: _____ Name and Title _____	
	[Continuation button]	

Signatures

Each of the undersigned declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. (See Section VII on penalties in the instructions.)

13. Signed _____
President (If other title, see instructions.)

14. Signed _____
Treasurer (If other title, see instructions.)

On _____
Date (mm/dd/yyyy) Telephone Number

On _____
Date (mm/dd/yyyy) Telephone Number

Name of person filing:	File Number: C-
------------------------	------------------------

9. Check the appropriate box(es) to indicate whether an object of the activities undertaken is directly or indirectly:

a. To persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing.

b. To supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding.

10. Terms and conditions. (Explain in detail. See instructions. Written agreements must be attached by clicking [here](#).)

[Continuation button]

11. Information regarding activities performed or to be performed by the labor relations consultant pursuant to agreement or arrangement. (See instructions.)

a. Nature of activities performed or to be performed by the labor relations consultant pursuant to the agreement or arrangement:

<p>PERSUADER ACTIVITIES: Select each activity performed or to be performed, if the object thereof was, directly or indirectly, to persuade employees concerning their rights to organize or bargain collectively through representatives of their own choosing, or their right to engage in any protected concerted activity in the workplace:</p> <p><input type="checkbox"/> Drafting, revising, or providing written materials for presentation, dissemination, or distribution to employees</p> <p><input type="checkbox"/> Drafting, revising, or providing a speech for presentation to employees</p> <p><input type="checkbox"/> Drafting, revising, or providing audiovisual or multi-media presentations for presentation, dissemination, or distribution to employees</p> <p><input type="checkbox"/> Drafting, revising, or providing website content for employees</p> <p><input type="checkbox"/> Planning or conducting individual or group employee meetings</p>	<p><input type="checkbox"/> Developing or administering employee attitude surveys concerning union awareness, sympathy, or proneness</p> <p><input type="checkbox"/> Training supervisors or employer representatives to conduct individual or group employee meetings</p> <p><input type="checkbox"/> Coordinating or directing the activities of supervisors or employer representatives</p> <p><input type="checkbox"/> Establishing or facilitating employee committees</p> <p><input type="checkbox"/> Developing personnel policies or practices</p> <p><input type="checkbox"/> Deciding which employees to target for persuader activity or disciplinary action</p> <p><input type="checkbox"/> Conducting a seminar for supervisors or employer representatives</p> <p><input type="checkbox"/> Other</p>	<p>INFORMATION SUPPLYING ACTIVITIES: Select each activity whereby you supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer:</p> <p><input type="checkbox"/> Supplying information obtained from:</p> <p style="padding-left: 20px;"><input type="checkbox"/> Research or investigation concerning employees or labor organizations</p> <p style="padding-left: 20px;"><input type="checkbox"/> Supervisors or employer representatives</p> <p style="padding-left: 20px;"><input type="checkbox"/> Employees, employee representatives, or union meetings</p> <p style="padding-left: 20px;"><input type="checkbox"/> Surveillance of employees or union representatives (video, audio, Internet, or in person)</p> <p><input type="checkbox"/> Other</p>
--	--	---

[Continuation button]

11.b. Period during which activities performed: _____ mm/dd/yyyy – mm/dd/yyyy	11.c. Extent of performance:
--	------------------------------

<p>11.d. Name and address of person(s) through whom activities were performed or will be performed:</p> <p>Name and Title _____</p> <p>Type of Person: <input type="checkbox"/> Employee of Consultant <input type="checkbox"/> Independent Contractor</p> <p>Organization _____</p> <p>Street _____</p> <p>City _____ State _____ ZIP Code _____</p> <p>Email Address _____</p> <p style="text-align: right;">[Continuation button]</p>	<p>12.a. Identify subject employees:</p> <p style="text-align: right;">[Continuation button]</p> <hr/> <p>12.b. Identify subject labor organizations:</p> <p style="text-align: right;">[Continuation button]</p>
---	---

Paperwork Reduction Act Statement. Public reporting burden for this collection of information is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

Revised XX-XX-XXXX

DO NOT SEND YOUR COMPLETED FORM LM-20 TO THE ABOVE ADDRESS.

Instructions for Form LM-20 Agreement and Activities Report

GENERAL INSTRUCTIONS

I. Why File

The Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), requires public disclosure of agreements or arrangements made between any person, including labor relations consultants and other individuals and organizations, and an employer to undertake certain actions, conduct, or communications concerning employees or labor organizations (hereinafter "activities"). Pursuant to Section 203(b) of the LMRDA, every person who undertakes any such activity under an agreement or arrangement with an employer is required to file detailed reports with the Secretary of Labor. The Secretary, under the authority of the LMRDA, has prescribed the filing of the Agreement and Activities Report, Form LM-20, to satisfy this reporting requirement.

These reporting requirements of the LMRDA and of the regulations and forms issued under the Act only relate to the disclosure of specific agreements, arrangements, and/or activities. The reporting requirements do not address whether such agreements or arrangements or activities are lawful or unlawful. The fact that a particular agreement, arrangement, or activity is or is not required to be reported does not indicate whether or not it is subject to any legal prohibition.

II. Who Must File

Any person who, as a direct or indirect party to any agreement or arrangement with an employer undertakes, pursuant to the agreement or arrangement, any activity of the type described in Section 203(b) of the LMRDA, must file a Form LM-20. The term "agreement or arrangement" should be construed broadly and does not need to be in writing. A "person" is defined by the LMRDA Section 3(d) to include, among others, labor relations consultants and other individuals and organizations. A person

"undertakes" activities not only when he/she performs the activity but also when he/she agrees to perform the activity or to have it performed.

A "direct or indirect party" to an agreement or arrangement includes (1) persons who have secured the services of another or of others in connection with an agreement or arrangement of the type referred to in Section 203(b) of the LMRDA, and (2) persons who have undertaken activities at the behest of another or of others with knowledge or reason to believe that they are undertaken as a result of an agreement or arrangement between an employer and any other person. However, bona fide regular officers, supervisors, or employees of an employer are exempt from this reporting requirement to the extent that the services they undertook to perform were undertaken as such bona fide regular officers, supervisors, or employees of their employer.

Note: Selected definitions from the LMRDA follow these instructions.

III. What Must Be Reported

The information required to be reported on Form LM-20, as set forth in the form and the instructions below, includes (1) the party or parties to the agreement or arrangement, (2) the object and terms and conditions of the agreement or arrangement, and (3) the activities performed or to be performed pursuant to the agreement or arrangement.

Any person required to file Form LM-20 must also file Form LM-21, Receipts and Disbursements Report. You must file Form LM-21 for each fiscal year during which you made or received payments as a result of any agreement or arrangement described in Form LM-20.

You must file Form LM-21 within 90 days after the end of your fiscal year.

Note: A separate Form LM-20 must be filed for each agreement or arrangement the filer makes with an employer to undertake any activity of the type set forth in LMRDA Section 203(b).

IV. Who Must Sign the Report

Both the president and the treasurer, or the corresponding principal officers, of the reporting organization must sign the completed Form LM-20. A report from a sole proprietor or an individual on his/her own behalf need only bear one signature.

V. When to File

Each person who has entered into any agreement or arrangement to undertake reportable activities must file the report *within 30 days* after entering into such agreement or arrangement. You must file any changes to the information reported in Form LM-20 (excluding matters related to Item 11.c) in a report with Item 1.c checked within 30 days of the change.

VI. How to File

Form LM-20 must be completed online, electronically signed, and submitted along with any required attachments to the Department using the OLMS Electronic Forms System (EFS). The electronic Form LM-20 can be accessed and completed at the OLMS website at www.olms.dol.gov.

A Form LM-20 filer will be able to file a report in paper format only if it asserts a temporary hardship exemption or applies for and is granted a continuing hardship exemption.

TEMPORARY HARDSHIP EXEMPTION:

If a Form LM-20 filer experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the filer may file Form LM-20 in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 1.b (Hardship Exempted Report) that the filer is filing under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards, which can be reached at the address below, by email at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

CONTINUING HARDSHIP EXEMPTION:

(a) A filer may apply in writing for a continuing hardship exemption if Form LM-20 cannot be filed electronically

without undue burden or expense. Such written application shall be received at least 30 days prior to the required due date of the report(s). The written application shall contain the information set forth in paragraph (b). The application must be mailed to the following address:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5609
Washington, DC 20210

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by email at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) the justification for the requested time period of the exemption; (2) the burden and expense that the filer would incur if it was required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the filer shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and so notifies the applicant, the filer shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, the filer shall submit the report(s) in paper format by the required due date. The filer may be required to submit Form LM-20 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 1.b (Hardship Exempted Report) that the filer is filing under the hardship exemption procedures.

Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

VII. Public Disclosure

Pursuant to the LMRDA, the U.S. Department of Labor is required to make all submitted reports available for public inspection. You may examine the Form LM-20 reports at, and purchase copies from, the Office of Labor-Management Standards (OLMS) Public Disclosure Room at the address listed in Section VI.

Also, in the Online Public Disclosure Room at www.unionreports.dol.gov, you may view and print copies of agreement and activities reports, beginning with the year 2000. You may also purchase copies of

agreement and activities reports from the Online Public Disclosure Room for 15 cents per page. Requests for 30 or fewer pages are provided free of charge.

VIII. Responsibilities and Penalties

The individual(s) required to sign Form LM-20 are personally responsible for its filing and accuracy. Under the LMRDA, these individuals are subject to criminal penalties for willful failure to file a required report and/or for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.

The reporting individual(s) and the reporting organization, if any, are also subject to civil prosecution for violations of the filing requirements. According to Section 210 of the LMRDA, "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

IX. Recordkeeping

The individual(s) required to file Form LM-20 are responsible for maintaining records which will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. You must retain the records for at least 5 years after the date you filed the report. You must retain any record necessary to verify, explain, or clarify the report, including, but not limited to vouchers, worksheets, receipts, and applicable resolutions.

X. Completing Form LM-20

Read the instructions carefully before completing Form LM-20.

Information Entry. Complete Form LM-20 by entering information directly into the fields on the form. If additional space is needed for items that require an explanation, click the "Continuation" button at the bottom of the section. The software automatically adds a continuation page.

General Instructions for Agreements, Arrangements, and Activities

You must file a separate report for each agreement or arrangement made with an employer where the object is, directly or indirectly:

- (1) To persuade employees to exercise or not to exercise, or to persuade them as to the manner of exercising, the right to organize and bargain collectively through representatives of their choice. (**Excluded** are agreements or arrangements that cover services relating exclusively to: (1) giving or agreeing to give advice to the employer; (2)

representing the employer before any court, administrative agency, or tribunal of arbitration, and (3) engaging in collective bargaining on the employer's behalf with respect to wages, hours, or other terms or conditions of employment or the negotiation of any agreement or any questions arising under the agreement.)

or

- (2) To supply the employer with information concerning activities of employees or a labor organization in connection with a labor dispute involving such employer. (**Excluded** are agreements or arrangements that cover services relating exclusively to supplying the employer with information for use only in conjunction with an administrative, arbitral, or judicial proceeding.)

Note: If the agreement or arrangement provides for **any** reportable activity, the exemptions do not apply and information must be reported for the entire agreement or arrangement.

With respect to persuader agreements or arrangements, "advice" means an oral or written recommendation regarding a decision or a course of conduct. In contrast to advice, "persuader activity" refers to a consultant's providing material or communications to, or engaging in other actions, conduct, or communications on behalf of an employer that, in whole or in part, have the object directly or indirectly to persuade employees concerning their rights to organize or bargain collectively. Reporting is thus required in any case in which the agreement or arrangement, in whole or part, calls for the consultant to engage in persuader activities, regardless of whether or not advice is also given.

Reportable Agreements or Arrangements

An employer and consultant each must file a report concerning an agreement or arrangement pursuant to which the consultant engages in activities that have as a direct or indirect object to, explicitly or implicitly, influence the decisions of employees with respect to forming, joining or assisting a union, collective bargaining, or any protected concerted activity (such as a strike) in the workplace.

Specific examples of persuader activities that, either alone or in combination, would trigger the reporting requirements include but are not limited to: drafting, revising, or providing a persuader speech, written material, website content, audiovisual or multimedia presentation, or other material or communication of any sort, to an employer for presentation, dissemination, or distribution to employees, directly or indirectly; planning or conducting individual or group meetings designed to persuade employees; developing or administering employee attitude surveys concerning union awareness, sympathy, or proneness; training supervisors or employer

representatives to conduct individual or group meetings designed to persuade employees; coordinating or directing the activities of supervisors or employer representatives to engage in the persuasion of employees; establishing or facilitating employee committees; developing employer personnel policies or practices designed to persuade employees; deciding which employees to target for persuader activity or disciplinary action; and coordinating the timing and sequencing of persuader tactics and strategies.

Reportable agreements or arrangements include those in which a consultant plans or orchestrates a campaign or program to avoid or counter a union organizing or collective bargaining effort, such as through the specific persuader activities illustrated above, or otherwise engages on behalf of the employer, in whole or part, in any other actions, conduct, or communications designed to persuade employees. Persuader activities trigger reporting whether or not the consultant performs the activities through direct contact with any employee. For example, a consultant must report if he or she engages in any activities that utilize employer representatives to persuade employees, such as by planning, directing, or coordinating the activities of employer representatives or providing persuader material to them for dissemination or distribution to employees, or in which the consultant drafts or implements policies for the employer that have as an object to directly or indirectly persuade employees.

Exempt Agreements or Arrangements

No report is required concerning an agreement or arrangement to exclusively provide advice to an employer. For example, a consultant who exclusively counsels employer representatives on what they may lawfully say to employees, ensures a client's compliance with the law, or provides guidance on NLRB practice or precedent, is providing "advice." Reports are not required concerning agreements or arrangements to exclusively provide such advice.

Generally, no report is required for an agreement or arrangement whereby a lawyer or other consultant conducts a group seminar or conference for employers solely to provide guidance to them. However, if a consultant engages in persuader activities at such meetings, such as those activities enumerated above, then the consultant and employer would be required to file reports concerning such agreement or arrangement. The Department cautions that employers and consultants cannot avoid the reporting requirements by inappropriately labeling an otherwise reportable persuader agreement or arrangement as a "seminar" or "conference."

While Section 203 of the Act does not amend or modify the rights protected by Section 8(c) of the National Labor Relations Act, as amended (NLRA), the LMRDA contains no provision exempting the activities protected by that section from the reporting requirements. Therefore, activities of the type set forth in Section 203(b) of the LMRDA must be reported regardless of whether they are protected by Section 8(c) of the NLRA.

Note: The text of NLRA Section 8(c) is set forth following these instructions.

Items 1–14

1. FILE NUMBER, HARDSHIP EXEMPTION, AND AMENDED REPORT:

1.a. File Number. Enter the five-digit file number assigned by OLMS for the reporting individual OR organization. Persons who filed an LM-20 prior to October 2003 were assigned four-digit file numbers.

OLMS has now expanded file numbers to five digits. Place a zero in front of your old four-digit file number to meet the new format requirement. For example, if your old file number was 1234, enter 01234 in Item 1 of this year's report. If you have never previously filed the Form LM-20, leave Item 1 blank.

1.b. Hardship Exemption. Indicate here if you are filing a hardcopy Form LM-20 pursuant to a hardship exemption.

1.c. Amended Report. Indicate here if you are filing an amended Form LM-20.

2. CONTACT INFORMATION FOR PERSON FILING

—Enter the full legal name of the reporting individual or organization, a trade or commercial name, if applicable (such as a d/b/a or "doing business as" name), the name and title of the person to whom mail should be directed, and the complete address where mail should be sent and received, including any building and room number. Also enter the Employer Identification Number (EIN) of the filer. If you do not have an EIN, enter "none."

3. OTHER ADDRESS WHERE RECORDS ARE KEPT

—If you maintain any of the records necessary to verify this report at an address different from the address listed in Item 2, enter the appropriate name and address in Item 3.

4. DATE FISCAL YEAR ENDS—Enter the date on which the fiscal year ends for the reporting individual or organization in mm/dd/yyyy format.

5. TYPE OF PERSON—If the person reporting is an individual, partnership, or corporation, so indicate by checking the appropriate box. If none of the choices apply, check "Other" and click the "Specify" button to generate more lines and describe the type of person.

6. FULL NAME AND ADDRESS OF EMPLOYER—

Enter the full legal name of the employer with whom you made the agreement or arrangement, a trade or commercial name, if applicable (such as a d/b/a or “doing business as” name), the name of the person to whom mail should be directed, and the complete address where mail should be sent and received, including any building and room number. Also enter the Employer Identification Number (EIN) of the employer. If the employer does not have an EIN, enter “none.”

7. DATE OF AGREEMENT OR ARRANGEMENT—

Enter the date on which you entered into the agreement or arrangement in mm/dd/yyyy format.

8. PERSON(S) THROUGH WHOM AGREEMENT OR ARRANGEMENT MADE—

(a) **Employer Representative:** Enter the name and title of each person, acting on behalf of the employer, making the agreement or arrangement, and state whether that person is an individual employer, partner, corporate officer, employee, or other agent or representative.

(b) **Prime Consultant:** If you are an indirect party (or sub-consultant), to the reported employer-consultant agreement, enter the name of the organization or person with whom you entered into such agreement or arrangement. If additional space is needed for the explanation, click the “Continuation” button at the bottom of the section.

9. OBJECT OF ACTIVITIES—Check the appropriate box(es) indicating whether the object of the agreement or arrangement is to, directly or indirectly, persuade employees to exercise their bargaining rights **or** to supply an employer with information related to a labor dispute. You must check either one or both of the boxes.

10. TERMS AND CONDITIONS—Provide a detailed explanation of the terms and conditions of the agreement or arrangement. If additional space is needed for the explanation, click the “Continuation” button at the bottom of the section. The software automatically adds a continuation page. If any agreement or arrangement is in whole or in part contained in a written contract, memorandum, letter, or other written instrument, or has been wholly or partially reduced to writing, you must refer to that document and attach a copy of it to this report by clicking on the attachment icon on the form.

11. DESCRIPTION OF ACTIVITIES—For each activity to be performed, give a detailed explanation of the following:

11.a. Nature of Activity. Select from the list in 11.a. each entry that describes the nature of a particular activity or activities performed or to be performed. The list is divided into two parts: persuader activities and information supplying activities, as identified in Item 9. For persuader activity, select each activity

performed or to be performed, if the object thereof was, directly or indirectly, to persuade employees concerning their rights to organize or bargain collectively through representatives of their own choosing, or their right to engage in any protected concerted activity in the workplace. Select all that apply for each part that you identified in Item 9. If none of the items listed accurately describes the nature of a particular activity or activities, select “Other” and click the “Continuation” button at the bottom of the section to generate a continuation page and describe the nature of the activity or activities. You may also click the “Continuation” button to provide further information for any activity selected.

11.b. Period during which activity performed.

Describe the period during which the activity will be performed. For example, if the performance will begin in June 2011 and will terminate in August 2011, so indicate by stating “06/01/2011 through 08/31/2011.”

11.c. Extent of Performance. Indicate the extent to which the activity has been performed. For example, you should indicate whether the activity is pending, ongoing, near completion, or completed.

11.d. Name and Address of person through whom activity performed. Enter the full legal title and contact information of the person(s) through whom the activities are to be performed or have been performed and indicate if those person(s) are employed by the consultant or serve as an independent contractor. Independent contractors in such cases are sub-consultants, who are required to file a separate Form LM-20 report. If additional space is needed for the explanation, click the “Continuation” button at the bottom of the section. If the address of the organization differs from the business address of the person who performed the activities, or if more than one person performed the activities, click the “Continuation” button to generate an additional page and enter the address of the organization or the additional persons on this continuation page.

12. SUBJECT GROUPS OF EMPLOYEES AND/OR LABOR ORGANIZATIONS—

Identify the subject groups of employees and/or labor organizations who are to be persuaded or concerning whose activities information is to be supplied to the employer.

12.a. Identify the subject employee(s) who are to be persuaded or concerning whose activities information is to be supplied to the employer, including a description of the department, job classification(s), work location, and/or shift(s) of the employees targeted, as well as the location of their work. If you need more space for the explanation, click the “Continuation” button in this field to generate a continuation page.

12.b. Identify the subject labor organization(s). If you need more space for the explanation, click the

"Continuation" button in this field to generate a continuation page.

13-14. SIGNATURES—The completed Form LM-20 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the reporting organization. A report from an individual or a sole proprietor, on his/her own behalf, need only bear **one** signature which you should enter in Item 13. Otherwise, this report must bear **two (2)** signatures. To sign the report, an officer will be required to attest to the data on the report and use his or her EFS username and password as the verification mechanism. Once signed, the completed report can be electronically submitted to OLMS.

If the report is from an organization and is signed by an officer other than the president and/or treasurer, enter the correct title in the title field next to the signature.

Enter the telephone number used by the signatories to conduct official business. You do not have to report a private, unlisted telephone number.

SELECTED DEFINITIONS AND RELATED PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

Section 3.

(a) 'Commerce' means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(b) 'State' includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf Lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).

(c) 'Industry affecting commerce' means any activity, business or industry in commerce or in which a labor dispute could hinder or obstruct commerce or the free flow of commerce and includes any activity or Industry 'affecting commerce' within the meaning of the Labor-Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(d) 'Person' includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, or receivers.

(e) 'Employer' means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes,

wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

(f) 'Employee' means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

(g) 'Labor dispute' includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(i) 'Labor organization' means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, or dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry

affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

Section 203.

(b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly-

(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

Section 204.

Nothing contained in this Act shall be construed to require an attorney who is a member in good standing of the bar of any State, to include in any report required to be filed pursuant to the provisions of this Act any information which was lawfully communicated to such attorney by any of his clients in the course of a legitimate attorney-client relationship.

National Labor Relations Act

Section 8(c).

The expressing of any views, argument, or opinion, or the discussion thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

If You Need Assistance

The Office of Labor-Management Standards has field offices in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA	Miami, FL
Birmingham, AL	Milwaukee, WI
Boston, MA	Minneapolis, MN
Buffalo, NY	Nashville, TN
Chicago, IL	New Haven, CT
Cincinnati, OH	New Orleans, LA
Cleveland, OH	New York, NY
Dallas, TX	Newark, NJ
Denver, CO	Philadelphia, PA
Detroit, MI	Phoenix, AZ
Grand Rapids, MI	Pittsburgh, PA
Guaynabo, PR	St. Louis, MO
Honolulu, HI	San Francisco, CA
Houston, TX	Seattle, WA
Kansas City, MO	Tampa, FL
Los Angeles, CA	Washington, DC

Consult local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and phone number of your nearest field office.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations (CFR) documents, is available on the OLMS website at www.olms.dol.gov.

Copies of labor organization annual financial reports, employer reports, labor relations consultant reports, and union officer and employee reports filed for the year 2000 and after can be viewed and printed at www.unionreports.gov. Copies of reports for the year 1999 and earlier can be ordered through the website. For questions on Form LM-20 and/or the instructions, call the Department of Labor National Call Center at: 866-4-USA-DOL (866-487-2365) or email olms-public@dol.gov.

If you would like to receive via email periodic updates from the Office of Labor-Management Standards, including information about the LM forms, enforcement results, and compliance assistance programs, you may subscribe to the OLMS Mailing List from the OLMS website: www.olms.dol.gov.

FORM LM-10 EMPLOYER REPORT

OMB No. XXXX-XXXX. Expires XX-XX-XXXX.

IMPORTANT: This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

Office of Labor-Management Standards
U.S. Department of Labor

OLMS

For Official Use Only

E

► Read the instructions carefully before completing this report. ◀

1.a. File Number E-	1.b. <input type="checkbox"/> Hardship Exemption	1.c. <input type="checkbox"/> Amended Report	2. Fiscal Year Covered: _____ through _____ (mm/dd/yyyy) (mm/dd/yyyy)
3. Name and address of Reporting Employer (including trade name, if any). Employer _____ Attention To (including title) _____ Street _____ City _____ State _____ ZIP Code _____ Email Address _____ Employer Identification Number (EIN) _____		4. Name of President or corresponding principal officer and address if different from address in Item 3. Name _____ Title _____ Street _____ City _____ State _____ ZIP Code _____ Email Address _____	
5. Any other address where records necessary to verify this report will be available for examination. Name _____ Title _____ Organization _____ Street _____ City _____ State _____ ZIP Code _____ Email Address _____		6. Indicate by checking the appropriate box or boxes where records necessary to verify this report will be available for examination. <input type="checkbox"/> Address in Item 3 <input type="checkbox"/> Address in Item 4 <input type="checkbox"/> Address in Item 5 7. Type of organization. <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Individual <input type="checkbox"/> Other (specify) _____	

Signatures

Each of the undersigned, duly authorized officers of the above employer declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. (See Section VIII on penalties in the instructions.)

18. Signed _____
President (If other title, see instructions.)

19. Signed _____
Treasurer (If other title, see instructions.)

On _____ Date (mm/dd/yyyy) Telephone Number _____

On _____ Date (mm/dd/yyyy) Telephone Number _____

PART A – Payments to Unions and Union Officials. You must complete Part A if you made or promised or agreed to make, directly or indirectly, any payment or loan of money or other thing of value (including reimbursed expenses) to any labor organization or to any officer, agent, shop steward, or other representative or employee of any labor organization.

8. Name of Recipient/Contact Name _____ Labor Organization _____

Individual recipient Labor organization recipient

Street _____ City _____ State _____ ZIP Code _____

Telephone _____ Email Address _____

If the address of the labor organization differs from that of the individual recipient of the payment or the contact person for the labor organization, click here: **[Continuation button]**

9.a. Date of each payment. (mm/dd/yyyy)	9.b. Amount of each payment.	9.c. Kind of payment. (Specify if payment or loan, and if in cash or property.)	9.d. Explain fully the circumstances of the payment, including the terms of any oral agreement or understanding pursuant to which it was made.
(1)			[Continuation button]
(2)			[Continuation button]
(3)			[Continuation button]

[Continuation button]

PART B – Persuader Payments to Employees and Employee Committees. Complete Part B if you made, directly or indirectly, any payment (including reimbursed expenses) to any of your employees, or to any group or committee of your employees, for the purpose of causing them to persuade other employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to other employees.

10. Name of Recipient _____

Type of Recipient: Employee Employee Group/Committee

If you checked "Employee Group/Committee" provide contact name and title: _____

Street _____ City _____ State _____ ZIP Code _____

Telephone _____ Email Address _____

If the address of the group or organization differs from that of the individual recipient of the payment or the contact person for the group or organization, click here: **[Continuation button]**

11.a. Date of each payment. (mm/dd/yyyy)	11.b. Amount of each payment.	11.c. Kind of payment. (Specify if payment or loan, and if in cash or property.)	11.d. Explain fully the circumstances of the payment, including the terms of any oral agreement or understanding pursuant to which it was made.
(1)			[Continuation button]
(2)			[Continuation button]
(3)			[Continuation button]

[Continuation button]

PART C – Persuader Agreements/Arrangements with Labor Relations Consultants. Check the box(es) below and complete Part C if you made any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person or organization undertook activities where an object thereof, directly or indirectly, was to:

- Persuade employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing.
- Furnish you with information concerning activities of employees or of a labor organization in connection with a labor dispute in which you were involved.

12. Name of person with whom (or through) a separate agreement was made _____
 Organization _____ Position in Organization _____
 Street _____ City _____ State _____ ZIP Code _____
 Telephone _____ Email Address _____
 Employer Identification Number (EIN) _____

If the address of the consultant or other organization differs from that of the individual with whom the separate agreement was made, click here: **[Continuation button]**

13.a. Date of the agreement or arrangement. (mm/dd/yyyy)	13.b. Terms and conditions. (Explain in detail; see instructions. Written agreements must be attached.)
--	---

[Continuation button]

14. Information regarding activities performed or to be performed by the labor relations consultant pursuant to agreement or arrangement.

14.a. Nature of activities performed or to be performed by the labor relations consultant pursuant to agreement or arrangement:

<p>PERSUADER ACTIVITIES: Select each activity performed or to be performed, if the object thereof was, directly or indirectly, to persuade employees concerning their rights to organize or bargain collectively through representatives of their own choosing, or their right to engage in any protected concerted activity in the workplace:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Drafting, revising, or providing written materials for presentation, dissemination, or distribution to employees <input type="checkbox"/> Drafting, revising, or providing a speech for presentation to employees <input type="checkbox"/> Drafting, revising, or providing audiovisual or multi-media presentations for presentation, dissemination, or distribution to employees <input type="checkbox"/> Drafting, revising, or providing website content for employees <input type="checkbox"/> Planning or conducting individual or group employee meetings 	<ul style="list-style-type: none"> <input type="checkbox"/> Developing or administering employee attitude surveys concerning union awareness, sympathy, or proneness <input type="checkbox"/> Training supervisors or employer representatives to conduct individual or group employee meetings <input type="checkbox"/> Coordinating or directing the activities of supervisors or employer representatives <input type="checkbox"/> Establishing or facilitating employee committees <input type="checkbox"/> Developing personnel policies or practices <input type="checkbox"/> Deciding which employees to target for persuader activity or disciplinary action <input type="checkbox"/> Conducting a seminar for supervisors or employer representatives <input type="checkbox"/> Other 	<p>INFORMATION SUPPLYING ACTIVITIES: Select each activity whereby the labor relations consultant supplies you with information concerning the activities of employees or a labor organization in connection with a labor dispute in which you are involved:</p> <p><input type="checkbox"/> Supplying information obtained from:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Research or investigation concerning employees or labor organizations <input type="checkbox"/> Supervisors or employer representatives <input type="checkbox"/> Employees, employee representatives, or union meetings <input type="checkbox"/> Surveillance of employees or union representatives (video, audio, Internet, or in person) <input type="checkbox"/> Other
---	---	---

[Continuation button]

14.b. Period during which performed.	14.c. Extent performed.
--------------------------------------	-------------------------

14.d. Name of person(s) who performed activities _____

Type of Person: Employee of Consultant Independent Contractor Separate Organization

Organization _____ Position in Organization _____

Street _____ City _____ State _____ ZIP Code _____

Telephone _____ Email Address _____

If the address of the organization differs from the business address of the person who performed the activities, or if more than one person performed the activities, click here:

[Continuation button]

[Continuation button]

PART C – Persuader Agreements/Arrangements with Labor Relations Consultants. Continued			
14.e. Identify subject employees.		14.f. Identify subject labor organizations.	
[Continuation button]		[Continuation button]	
15.a. Date of each payment. (mm/dd/yyyy)	15.b. Amount of each payment.	15.c. Kind of payment. (Specify if payment or loan, and if in cash or property.)	15.d. Explain fully the circumstances of the payment(s), including the terms of any oral agreement or understanding pursuant to which it was made.
(1)			[Continuation button]
(2)			[Continuation button]
(3)			[Continuation button]

[Continuation button]

<p>PART D – Expenditures Made to Interfere With, Restrain, or Coerce Employees; Obtain Information Concerning Employees or a Labor Organization.</p> <p>Check the box(es) below and complete Part D if you made:</p> <p><input type="checkbox"/> Any expenditure where an object thereof, directly or indirectly, was to interfere with, restrain, or coerce employees in the right to organize and bargain collectively through representatives of their own choosing; or</p> <p><input type="checkbox"/> Any expenditure where an object thereof, directly or indirectly, was to obtain information concerning the activities of employees or of a labor organization in connection with a labor dispute in which you were involved.</p>			
<p>16. Name of Recipient _____</p> <p>Type of Recipient: <input type="checkbox"/> Employee <input type="checkbox"/> Independent Contractor <input type="checkbox"/> Business/Organization</p> <p>If you checked "Business/Organization," provide contact name and title: _____</p> <p>Street _____ City _____ State _____ ZIP Code _____</p> <p>Telephone _____ Email Address _____</p> <p>If the address of the consultant or other organization differs from that of the individual with whom the separate agreement was made, click here:</p>			
[Continuation button]			
17.a. Date of each expenditure. (mm/dd/yyyy)	17.b. Amount of each expenditure.	17.c. Kind of expenditure (Specify if payment or loan, and if in cash or property.)	17.d. Explain fully the circumstances of the expenditure(s), including the terms of any oral agreement or understanding pursuant to which they were made.
(1)			[Continuation button]
(2)			[Continuation button]
(3)			[Continuation button]

[Continuation button]

Paperwork Reduction Act Statement. Public reporting burden for this collection of information is estimated to average 120 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

Revised XX-XX-XXXX

DO NOT SEND YOUR COMPLETED FORM LM-10 TO THE ABOVE ADDRESS.

Instructions for Form LM-10 Employer Report

GENERAL INSTRUCTIONS

I. Why File

The Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), requires public disclosure of specific financial transactions, agreements, or arrangements made between an employer **and** one or more of the following: a labor organization, union official, employee, or labor relations consultant. Additionally, an employer must disclose expenditures for certain objects relating to activities of employees or a union. Pursuant to Section 203 of the LMRDA, every employer who has engaged in any such transaction, agreement, arrangement, or expenditures during the fiscal year must file a detailed report with the Secretary of Labor. The Secretary, under the authority of the LMRDA, has prescribed the filing of the Employer Report, Form LM-10, for employers to satisfy this reporting requirement.

The reporting requirements of the LMRDA and of the regulations and forms issued under the Act only relate to the disclosure of specified payments. The reporting requirements do not address whether specific payments, expenditures, transactions, agreements, or arrangements are lawful or unlawful. The fact that a particular payment, expenditure, transaction, agreement, or arrangement is or is not required to be reported does not indicate whether it is or is not subject to any legal prohibition.

II. Who Must File

Any employer, as defined by the LMRDA, who has engaged in certain financial transactions, agreements, or arrangements, of the type described in Section 203(a) of the Act, with any labor organization, union official, employee or labor relations consultant, **or** who has made expenditures for certain objects relating to activities of employees or a union, must file a Form LM-10. An employer required to file must complete only one LM-10 each fiscal year that covers all instances of reportable activity even if activity occurs at multiple locations.

Note: Selected definitions from the LMRDA follow these instructions.

III. What Must Be Reported

The types of financial transactions, agreements, arrangements, or expenditures that must be reported are set forth in Form LM-10. The LMRDA states that every employer involved in any such transaction, agreement, or arrangement during the fiscal year must file a detailed report with the Secretary of Labor indicating the following: (1) the date and amount of each transaction, agreement, or arrangement; (2) the name, address, and position of the person with whom the agreement, arrangement, or transaction was made; and (3) a full explanation of the circumstances of all payments made, including the terms of any agreement or understanding pursuant to which they were made.

Form LM-10 is divided into four parts, Part A, Part B, Part C, and Part D.

Part A, pursuant to LMRDA section 203(a)(1), details direct or indirect payment, including loans, to unions or union officials pursuant to LMRDA section 203(a)(1).

Part B, pursuant to LMRDA section 203(a)(2), details direct or indirect payments (including reimbursed expenses) to any of the employer's employees, or to any group or committee of the employer's employees, for the purpose of causing them to persuade other employees to exercise or not exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing without previously or at the same time disclosing such payment to all such other employees.

Part C, pursuant to LMRDA sections 203(a)(4) and (5), details agreements and arrangements, and any payments made pursuant to such agreements or arrangements, between employers and labor relations consultants or other independent contractors or organizations, under which the consultant or independent contractor or organization engages in actions, conduct, or communications where a direct or indirect object thereof is to persuade employees to exercise or not to exercise, or regarding the manner of exercising the right to organize and bargain collectively through representatives of their own choosing, or under which the consultant or independent contractor or organization supplies information regarding employees or a labor organization in connection with a labor dispute involving the employer.

Part D, pursuant to LMRDA section 203(a)(3), details expenditures where an object thereof, directly or indirectly, was to interfere with, restrain, or coerce employees in the right to organize and bargain collectively through representatives of their own choosing; and any expenditure where an object thereof, directly or indirectly, was to obtain information concerning the activities of employees or of a labor organization in connection with a labor dispute involving the employer.

Special Reports. In addition to this report, the Secretary may require employers subject to the LMRDA to submit special reports on relevant information, including but not necessarily confined to reports involving specifically identified personnel on particular matters referred to in the instructions for Part A.

While Section 203 of the LMRDA does not amend or modify the rights protected by Section 8(c) of the National Labor Relations Act, as amended (NLRA), the LMRDA contains no provision exempting the activities protected by that section from the reporting requirements. Therefore, employers must report activities of the type set forth in Item 8, since the LMRDA requires such reports, regardless of whether the activities are protected by Section 8(c) of the NLRA. Note, however, that the information employers are required to report in response to question 8.c does not include expenditures relating exclusively to matters protected by Section 8(c) of the NLRA, because the definition in Section 203(g) of the LMRDA of the term "interfere with, restrain, or coerce," which is used in question 8.c, does not cover such matters.

Note: The text of NLRA Section 8(c) is set forth following these instructions.

IV. Who Must Sign the Report

Both the president and the treasurer, or corresponding officers, of the reporting employer must sign the completed Form LM-10. A report from a sole proprietor need only bear one signature.

V. When to File

Each employer, as defined by the LMRDA, who has engaged in any of the transactions or arrangements set forth in the form must submit a Form LM-10 report *within 90 days* after the end of the employer's fiscal year.

VI. How to File

Form LM-10 must be completed online, electronically signed, and submitted along with any required attachments to the Department using the OLMS Electronic Forms System (EFS). The electronic Form LM-10 can be accessed and completed at the OLMS website at www.olms.dol.gov.

A Form LM-10 filer will be able to file a report in paper format only if it asserts a temporary hardship exemption or applies for and is granted a continuing hardship exemption.

TEMPORARY HARDSHIP EXEMPTION:

If a Form LM-10 filer experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the filer may file Form LM-10 in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 1.b (Hardship Exempted Report) that the filer is filing under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards, which can be reached at the address below, by email at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

CONTINUING HARDSHIP EXEMPTION:

(a) A filer may apply in writing for a continuing hardship exemption if Form LM-10 cannot be filed electronically without undue burden or expense. Such written application shall be received at least 30 days prior to the required due date of the report(s). The written application shall contain the information set forth in paragraph (b). The application must be mailed to the following address:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5609
Washington, DC 20210

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by email at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) the justification for the requested time period of the exemption; (2) the burden and expense that the filer would incur if it was required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the filer shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and so notifies the applicant, the filer shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, the filer shall submit the report(s) in paper format by the required due date. The filer may be required to submit Form LM-10 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 1.b (Hardship Exempted Report)

that the filer is filing under the hardship exemption procedures.

Note: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

VII. Public Disclosure

Pursuant to the LMRDA, the U.S. Department of Labor is required to make all submitted reports available for public inspection. You may examine the Form LM-10 reports at, and purchase copies from, the OLMS Public Disclosure Room at the address listed in Section VI.

Also, through the Online Public Disclosure Room at www.unionreports.dol.gov, you may view and print copies of employer reports, beginning with the year 2000. You may also purchase copies of employer reports from the Online Public Disclosure Room for 15 cents per page. Requests for 30 or fewer pages are provided free of charge.

VIII. Officer Responsibilities and Penalties

The president and treasurer, or corresponding principal officers of the reporting employer required to sign the Form LM-10, are personally responsible for its filing and accuracy. Under the LMRDA, these individuals are subject to criminal penalties for willful failure to file a required report and/or for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.

The reporting employer and the officers required to sign Form LM-10 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

IX. Recordkeeping

The individuals required to file Form LM-10 are responsible for maintaining records which must provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. You must retain the records for at least 5 years after the date you filed the report. You must retain any record necessary to verify, explain, or clarify the report including, but not limited to, vouchers, worksheets, receipts, and applicable resolutions.

X. Completing Form LM-10

Read the instructions carefully before completing Form LM-10.

Information Entry. Complete Form LM-10 by entering information directly into the fields on the form. If additional space is needed for items that require an explanation, click the "Continuation" button at the bottom of the section. The software automatically adds a continuation page.

Entering Dollars. In all items dealing with monetary values, report amounts in dollars only; do not enter cents. Round cents to the nearest dollar. Enter a single "0" in the boxes for reporting dollars if the employer has nothing to report.

Additional Parts. If you entered into multiple reportable transactions, agreements, or arrangements, then click on the "Continuation" button at the bottom of each Part to attach additional Parts A, B, C, or D.

Information Items (Items 1–7)

1. FILE NUMBER, HARDSHIP EXEMPTION, AND AMENDED REPORT:

1.a. File Number. Enter the five-digit file number assigned by OLMS for the reporting employer. Employers who filed an LM-10 prior to October 2003 were assigned four-digit file numbers. OLMS has now expanded file numbers to five digits. Place a zero in front of your old four-digit file number to meet the new format requirement. For example, if your old file number was 1234, enter 01234 in Item 1 of this year's report. If you have never previously filed the Form LM-10, leave Item 1 blank.

1.b. Hardship Exemption. Indicate here if you are filing a hardcopy Form LM-10 pursuant to a hardship exemption.

1.c. Amended Report. Indicate here if you are filing an amended Form LM-10.

2. FISCAL YEAR—Enter the beginning and ending dates of the fiscal year covered in this report in mm/dd/yyyy format. The report must not cover more than a 12-month period. For example, if the reporting employer's 12-month fiscal year begins on January 1 and ends on December 31, do not enter a date beyond the 12-month period, such as January 1 to January 1; this is an invalid date entry.

3. NAME AND MAILING ADDRESS—Enter the full legal name of the reporting employer, a trade or commercial name, if applicable (such as a d/b/a or "doing business as" name), the name and title of the person to whom mail should be directed, and the complete address where mail should be sent and received, including any building and room number. Enter a valid email address for the employer. Also enter the Employer Identification Number (EIN) of the employer. If the employer does not have an EIN, enter "none."

4. NAME AND ADDRESS OF PRINCIPAL OFFICER—Enter the name and business address of the president or corresponding principal officer if it is different from Item 3. Enter a valid email address for the principal officer.

5. ANY OTHER NAME AND ADDRESS WHERE RECORDS ARE KEPT—If you maintain any of the records necessary to verify this report at an address different from the addresses listed in Items 3 or 4, enter the appropriate name and address in Item 5.

6. WHERE RECORDS ARE AVAILABLE—Select the appropriate box(es) to indicate where the records

necessary to verify this report are available for examination.

7. TYPE OF ORGANIZATION—Select the appropriate box that describes the reporting employer: Corporation, Partnership, or Individual. If none of these choices apply, select “Other” and specify the type of reporting employer filing this report in the space provided.

Part A – PAYMENTS TO UNIONS OR UNION OFFICIALS

Complete Part A if you made or promised or agreed to make, directly or indirectly, any payment or loan of money or other thing of value (including reimbursed expenses) to any labor organization or to any officer, agent, shop steward, or other representative or employee of any labor organization.

In answering Part A, **exclude** the following: (1) Payments of the kind referred to in Section 302(c) of the Labor Management Relations Act, 1947, as amended (LMRA); **and** (2) Payments or loans made in the regular course of business as a national or state bank, credit union, insurance company, savings and loan association, or other credit institution. (The text of Section 302(c) of the LMRA is set forth below.)

None of the following situations are required to be reported:

(a) payments made in the regular course of business to a class of persons determined without regard to whether they are, or are identified with, labor organizations and whose relationship to labor organizations is not ordinarily known to or readily ascertainable by the payer, for example, interest on bonds and dividends on stock issued by the reporting employer;

(b) loans made to employees under circumstances and terms unrelated to the employees' status in a labor organization;

(c) payments made to any regular employee as wages or other compensation for service as a regular employee of the employer, or by reason of his service as an employee of such employer, for periods during regular working hours in which such employee engages in activities other than productive work, if the payments for such periods of time are:

(1) required by law or a bona fide collective bargaining agreement, or

(2) made pursuant to a custom or practice under such a collective agreement, or

(3) made pursuant to a policy, custom, or practice with respect to employment in the establishment which the employer has adopted without regard to any holding by such employee of a position with a labor organization;

(d) initiation fees and assessments paid to labor organizations and deducted from the wages of employees pursuant to individual assignments meeting

the terms specified in paragraph (4) of Section 302(c) of the LMRA;

(e) sporadic or occasional gifts, gratuities, or favors of insubstantial value, given under circumstances and terms unrelated to the recipients' status in a labor organization; for example, traditional Christmas gifts.

8. Enter the name and title of the recipient/contact name and title (if the recipient was that of a labor organization), name of the labor organization, and specify whether the recipient was an individual or a labor organization by selecting the appropriate box. Enter the address, telephone number, and email address of the recipient or contact person in the space provided. If the address of the labor organization differs from that of the individual recipient of the payment or the contact person for the labor organization, click the “Continuation” button to generate an additional page and enter the address of the labor organization on this continuation page.

9. Enter information for each payment. If additional lines are needed for more payments, click the “Continuation” button at the end of item 9 to generate more lines.

9.a. Enter the date of the payment was made (or promise or agreement was entered into) in mm/dd/yyyy format.

9.b. Enter the amount of the payment.

9.c. Specify if this was a payment or a loan and if it was made by cash or property. If this form of payment was cash, enter the U.S. dollar amount of each payment made during the fiscal year. If the form of payment was property, provide the market value in U.S. dollars of the property at the time of year. If the form of payment was another thing of value, describe the payment.

9.d. Explain fully the circumstances of the payment, including the terms of any oral agreement or understanding under which it was made. Provide a full explanation identifying the purpose and circumstances of the payments made or agreed or promised to be made. The explanation must fully outline the conditions and terms of any agreement or promise. In addition to the above, you must indicate whether the payments or promises reported specifically benefited the person or persons or labor organizations named in Item 8. If you made or promised or agreed to make payments through a person or persons not shown above, you must provide the full name and address of such person or persons. Your explanation must clearly indicate why you must report the payment. Any incomplete responses or unclear explanations will render this report deficient. If you need more space for the explanation, click the “Continuation” button in this field to generate a continuation page.

Part B – PERSUADER PAYMENTS TO EMPLOYEES OR EMPLOYEE COMMITTEES

Complete Part B if you made, directly or indirectly, any payment (including reimbursed expenses) to any of your employees, or to any group or committee of your employees, for the purpose of causing them to persuade other employees to exercise or not to exercise, or as to the

manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees.

In answering Part B, **exclude** payments made to any regular officer, supervisor, or employee as compensation for services as a regular officer, supervisor, or employee.

10. Enter the name of the recipient and specify whether the recipient was an employee or employee group or committee by selecting the appropriate box. If you selected "Employee Group/Committee," provide a contact name and title. Enter the address, telephone number, and email address of the recipient in the space provided. If the address of the group or committee differed from that of the individual recipient of the payment or the contact person for the group or committee, click the "Continuation" button to generate an additional page and enter the address of the group or committee on this continuation page.

11. Enter information for each payment. If additional lines are needed for more payments, click the "Continuation" button at the end of item 11 to generate more lines.

11.a. Enter the date of the payment in mm/dd/yyyy format.

11.b. Enter the amount of the payment.

11.c. Specify if this was a payment or a loan and if it was made by cash or property. If this form of payment was cash, enter the U.S. dollar amount of each payment made during the fiscal year. If the form of payment was property, provide the market value in U.S. dollars of the property at the time of year.

11.d. Explain fully the circumstances of the payment, including the terms of any oral agreement or understanding under which it was made. Provide a full explanation identifying the purpose and circumstances of the payments made or agreed or promised to be made. The explanation must fully outline the conditions and terms of any agreement or promise. In addition to the above, you must indicate whether the payments or promises reported specifically benefited the person or persons named in Item 10. If you made payments through a person or persons not shown above, you must provide the full name and address of such person or persons. Your explanation must clearly indicate why you must report the payment. Any incomplete responses or unclear explanations will render this report deficient. If you need more space for the explanation, click the "Continuation" button in this field to generate a continuation page.

Part C – PERSUADER AGREEMENTS OR ARRANGEMENTS WITH LABOR RELATIONS CONSULTANTS

Check the appropriate box(es) and complete Part C if you made any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person or organization undertook

activities where an object thereof, directly or indirectly, was to:

- Persuade employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing.
- Furnish you with information concerning activities of employees or of a labor organization in connection with a labor dispute in which you were involved.

The term "agreement or arrangement" should be construed broadly and does not need to be in writing. A person "undertakes" activities not only when he/she performs the activity but also when he/she agrees to perform the activity or to have it performed.

In answering Part C, **exclude** agreements or arrangements covering services related exclusively to the following:

- (1) giving or agreeing to give you advice; **or**
- (2) agreeing to represent you before any court, administrative agency, or tribunal of arbitration; **or**
- (3) engaging in collective bargaining on your behalf with respect to wages, hours, or other terms or conditions of employment or negotiating an agreement or any question arising thereunder.

Note: If the agreement or arrangement provides for **any** reportable activity, the exemptions do not apply and information must be reported for the entire agreement or arrangement.

With respect to persuader agreements or arrangements, "advice" means an oral or written recommendation regarding a decision or a course of conduct. In contrast to advice, "persuader activity" refers to a consultant's providing material or communications to, or engaging in other actions, conduct, or communications on behalf of an employer that, in whole or in part, have the object directly or indirectly to persuade employees concerning their rights to organize or bargain collectively. Reporting is thus required in any case in which the agreement or arrangement, in whole or part, calls for the consultant to engage in persuader activities, regardless of whether or not advice is also given.

Reportable Agreements or Arrangements

An employer and consultant each must file a report concerning an agreement or arrangement pursuant to which the consultant engages in activities that have as a direct or indirect object to, explicitly or implicitly, influence the decisions of employees with respect to forming, joining, or assisting a union, collective bargaining, or any protected concerted activity (such as a strike) in the workplace.

Specific examples of persuader activities that, either alone or in combination, would trigger the reporting requirements include but are not limited to: drafting, revising, or providing a persuader speech, written material, website content, audiovisual or multimedia presentation, or other material or communication of any

sort, to an employer for presentation, dissemination, or distribution to employees, directly or indirectly; planning or conducting individual or group meetings designed to persuade employees; developing or administering employee attitude surveys concerning union awareness, sympathy, or proneness; training supervisors or employer representatives to conduct individual or group meetings designed to persuade employees; coordinating or directing the activities of supervisors or employer representatives to engage in the persuasion of employees; establishing or facilitating employee committees; developing employer personnel policies or practices designed to persuade employees; deciding which employees to target for persuader activity or disciplinary action; and coordinating the timing and sequencing of persuader tactics and strategies.

Reportable agreements or arrangements include those in which a consultant plans or orchestrates a campaign or program to avoid or counter a union organizing or collective bargaining effort, such as through the specific persuader activities illustrated above, or otherwise engages on behalf of the employer, in whole or part, in any other actions, conduct, or communications designed to persuade employees. Persuader activities trigger reporting whether or not the consultant performs the activities through direct contact with any employee. For example, a consultant must report if he or she engages in any activities that utilize employer representatives to persuade employees, such as by planning, directing, or coordinating the activities of employer representatives or providing persuader material to them for dissemination or distribution to employees, or in which the consultant drafts or implements policies for the employer that have as an object to directly or indirectly persuade employees.

Exempt Agreements or Arrangements

No report is required concerning an agreement or arrangement to exclusively provide advice to an employer. For example, a consultant who exclusively counsels employer representatives on what they may lawfully say to employees, ensures a client's compliance with the law, or provides guidance on NLRB practice or precedent, is providing "advice." Reports are not required concerning agreements or arrangements to exclusively provide such advice.

Generally, no report is required for an agreement or arrangement whereby a lawyer or other consultant conducts a group seminar or conference for employers solely to provide guidance to them. However, if a consultant engages in persuader activities at such meetings, such as those activities enumerated above, then the consultant and employer would be required to file reports concerning such agreement or arrangement. The Department cautions that employers and consultants cannot avoid the reporting requirements by inappropriately labeling an otherwise reportable persuader agreement or arrangement as a "seminar" or "conference."

In answering Item Part C, also **exclude** agreements or arrangements for obtaining information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding.

12. Enter the name of the person with whom (or through) a separate agreement was made. Enter the name of the organization, and that person's position in the organization. Enter the address, telephone number, and email address of the person in the space provided. Also enter the Employer Identification Number (EIN) of the person, if applicable. If the address of the consultant or other organization differed from that of the individual with whom the separate agreement was made, click the "Continuation" button to generate an additional page and enter the address of the consultant on this continuation page.

13. Enter details about the agreement or arrangement:

13.a. Enter the date of the agreement or arrangement in mm/dd/yyyy format.

13.b. Explain fully the terms and conditions of the agreement or arrangement. Any incomplete responses or unclear explanations will render this report deficient. If you need more space for the explanation, click the "Continuation" button in this field to generate a continuation page.

14. Enter details about the specific activities performed or to be performed:

14.a. Nature of Activities. Select from the list in 14.a. each entry that describes the nature of a particular activity or activities performed or to be performed. The list is divided into two parts: persuader activities and information supplying activities, as identified in the initial boxes to Part C. For persuader activity, select each activity performed or to be performed, if the object thereof was, directly or indirectly, to persuade employees concerning their rights to organize or bargain collectively through representatives of their own choosing, or their right to engage in any protected concerted activity in the workplace. Select all that apply for each part that you identified in the initial boxes. If none of the items listed accurately describes the nature of a particular activity or activities, select **Other** and then click the "Continuation" button at the bottom of this field to generate a continuation page on which to provide an explanation of the activity or activities. You may also click the "Continuation" button to provide further information for any activity selected.

14.b. Describe the period during which the activity will be performed. For example, if the performance will begin in June 2011 and will terminate in August 2011, so indicate by stating "06/01/2011 through 08/31/2011."

14.c. Indicate the extent to which the activity has been performed. For example, you should indicate whether the activity is pending, ongoing, near completion, or completed.

14.d. Enter the name of the person(s) who performed activities and indicate if those persons are employed by

the consultant or serve as an independent contractor. Independent contractors in such cases are sub-consultants, who are required to file a separate Form LM-20 report. Enter the name of the organization, and that person's position in the organization. Enter the address, telephone number, and email address of the person in the space provided. If the address of the organization differs from the business address of the person who performed the activities, or if more than one person performed the activities, click the "Continuation" button to generate an additional page and enter the address of the organization or the additional persons on this continuation page.

14.e. Identify the subject employees who are to be persuaded or concerning whose activities information is to be supplied to the employer, including a description of the department, job classification(s), work location, and/or shift(s) of the employees targeted, as well as the location of their work. If you need more space for the explanation, click the "Continuation" button in this field to generate a continuation page.

14.f. Identify the subject labor organizations that employees are seeking to join, or whose activities information is to be supplied to the employer. If you need more space for the explanation, click the "Continuation" button in this field to generate a continuation page.

15. Enter information for each payment. If additional lines are needed for more payments, click the "Continuation" button at the end of item 15 to generate more lines.

15.a. Enter the date of the payment in mm/dd/yyyy format.

15.b. Enter the amount of the payment. If this form of payment was cash, enter the U.S. dollar amount of each payment made during the fiscal year. If the form of payment was property, provide the market value in U.S. dollars of the property at the time of year.

15.c. Specify if this was a payment or a loan and if it was made by cash or property.

15.d. Explain fully the circumstances of the payment, including the terms of any oral agreement or understanding under which it was made. Provide a full explanation identifying the purpose and circumstances of the payments made. The explanation must fully outline the conditions and terms of any agreement or promise. In addition to the above, you must indicate whether the payments reported specifically benefited the person or persons named in Item 12. If you made payments through a person or persons not shown above, you must provide the full name and address of such person or persons. Your explanation must clearly indicate why you must report the payment. Any incomplete responses or unclear explanations will render this report deficient. If you need more space for the explanation, click the "Continuation" button in this field to generate a continuation page.

Part D – EXPENDITURES MADE TO INTERFERE WITH, RESTRAIN, OR COERCE EMPLOYEES OR TO OBTAIN INFORMATION CONCERNING EMPLOYEES OR A LABOR ORGANIZATION

Check the appropriate box in Part D and complete this Part if you made:

- Any expenditure where an object thereof, directly or indirectly, was to interfere with, restrain, or coerce employees in the right to organize and bargain collectively through representatives of their own choosing.

In answering this provision of Part D, **exclude** expenditures relating exclusively to matters protected by Section 8(c) of the National Labor Relations Act, as amended (NLRA).

Note: The definition set forth in Section 203(g) of the LMRDA for the term "interfere with, restrain, or coerce" excludes matters protected by Section 8(c) of the NLRA. Therefore, expenditures related exclusively to such matters protected by Section 8(c) are not required to be reported in this question. (The text of Section 8(c) of the NLRA is set forth below.)

- Any expenditure where an object thereof, directly or indirectly, was to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute in which you were involved.

In answering this provision of Part D, **exclude** the following:

- (1) Information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; and
- (2) Expenditures made to any regular officer, supervisor, or employee as compensation for service as a regular officer, supervisor, or employee.

16. Enter the name of the recipient of the expenditure and specify whether the recipient was an employee, an independent contractor or other individual, or a business or organization by selecting the appropriate box. If you selected "Business/Organization," provide a contact name and title. Enter the address, telephone number, and email address of the recipient in the space provided. If the address of the business or other organization differed from that of the individual who received the expenditure or the contact for the business or organization, click the "Continuation" button to generate an additional page and enter the address of the business or other organization on this continuation page.

17. Enter information for each expenditure. If additional lines are needed for more payments, click the

"Continuation" button at the end of item 17 to generate more lines.

17.a. Enter the date of the expenditure in mm/dd/yyyy format.

17.b. Enter the amount of the expenditure.

17.c. Specify if this was a payment or a loan and if it was made by cash or property.

17.d. Explain fully the circumstances of the expenditure, including the terms of any oral agreement or understanding under which it was made. Provide a full explanation identifying the purpose and circumstances of the expenditures made or agreed or promised to be made. The explanation must fully outline the conditions and terms of any agreement or promise. In addition to the above, you must indicate whether the payments or promises reported specifically benefited the person or persons named in Item 16. If you made expenditures through a person or persons not shown above, you must provide the full name and address of such person or persons. Your explanation must clearly indicate why you must report the expenditure. Any incomplete responses or unclear explanations will render this report deficient. If you need more space for the explanation, click the "Continuation" button in this field to generate a continuation page.

18–19. Signatures—The completed Form LM-10 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the reporting employer. A report from a sole proprietor need only bear **one** signature which you should enter in Item 18. Otherwise, this report must bear **two (2)** signatures. To sign the report, an officer will be required to attest to the data on the report and use his or her EFS username and password as the verification mechanism. Once signed, the completed report can be electronically submitted to OLMS.

If the report is signed by an officer other than the president and/or treasurer, enter the correct title in the title field next to the signature.

Enter the telephone number used by the signatories to conduct official business. You do not have to report a private, unlisted telephone number.

SELECTED DEFINITIONS FROM THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

SEC. 3. For the purposes of titles I, II, III, IV, V except section 505), and VI of this Act—

- (a) "Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.
- (b) "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).
- (c) "Industry affecting commerce" means any activity, business, or industry in commerce or in which a labor

dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

- (d) "Persons" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, or receivers.
- (e) "Employer" means any employer or any group or association of employers engaged in an industry affecting commerce
 - (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or
 - (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.
- (f) "Employee" means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.
- (g) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.
- (h) Not applicable.
- (i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.
- (j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it:
 - (1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

- (2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees or an employer or employers engaged in an industry affecting commerce;
 - (3) or has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2) ;
 - (4) or has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or
 - (5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.
- (k) Not applicable.
 - (l) Not applicable.
 - (m) "Labor relations consultant" means any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.
 - (n) "Officer" means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.
 - (o) Not applicable.
 - (p) Not applicable.
 - (q) "Officer, agent, shop steward, or other representative," when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried non-supervisory professional staff, stenographic, and service personnel.

NATIONAL LABOR RELATIONS ACT, AS AMENDED

Section 8. "(c) The expressing of any views, argument, or opinion or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

RELATED PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

Report of Employers Sec. 203.

- (a) Every employer who in any fiscal year made-
 - (1) any payment or loan, direct or indirect, of money or other thing of value (including reimbursed expenses), or any promise or agreement therefore, to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization, except
 - (a) payments or loans made by any national or State bank, credit union, insurance company, savings and loan association or other credit institution and
 - (b) payments of the kind referred to in section 302 (c) of the Labor Management Relations Act, 1947, as amended;
 - (2) any payment (including reimbursed expenses) to any of his employees, or any group or committee of such employees, for the purpose of causing such employee or group or committee of employees to persuade other employees to exercise or not to exercise, or as the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees;
 - (3) any expenditure, during the fiscal year, where an object thereof, directly or indirectly, is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing, or is to obtain information concerning the activities of employees, or a labor organization in connection with a labor dispute involving such employer, except for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;
 - (4) any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply such employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; or
 - (5) any payment (including reimbursed expenses) pursuant to an agreement or arrangement described in subdivision(4); shall file with the Secretary a report, in a form prescribed by him, signed by its president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or

labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.

- (b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly-
- (1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or
 - (2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

- (c) Nothing in this section shall be construed to require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

Nothing contained in this section shall be construed to require an employer to file a report under subsection (a) unless he has made an expenditure, payment, loan, agreement, or arrangement of the kind described therein. Nothing contained in this section shall be construed to require any other person to file a report under subsection (b) unless he was a party to an

agreement or arrangement of the kind described therein.

- (d) Nothing contained in this section shall be construed to require any regular officer, supervisor, or employee of an employer to file a report in connection with services rendered to such employer nor shall any employer be required to file a report covering expenditures made to any regular officer, supervisor, or employee of an employer as compensation for service as a regular officer, supervisor, or employee of such employer.
- (e) Nothing contained in this section shall be construed as an amendment to, or modification of the rights protected by, section 8 (c) of the National Labor Relations Act, as amended.
- (f) The term "interfere with, restrain, or coerce" as used in this section means interference, restraint, and coercion which, if done with respect to the exercise of rights guaranteed in section 7 of the National Labor Relations Act, as amended, would, under section 8(a) of such Act, constitute an unfair labor practice.

SECTION 302(c) OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, AS AMENDED

"(c) The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents) Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident

insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event of the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such dead-lock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; or (6) with respect to money or other thing of value paid by any employer to a trust fund established by such a representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for preschool and school age dependents of employees: Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: Provided further, That no such legal services shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, as amended, or this Act; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959; or (9)

with respect to money or other things of value paid by an employer to a plant, area or industry-wide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978."

If You Need Assistance

The Office of Labor-Management Standards has field offices in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA	Miami, FL
Birmingham, AL	Milwaukee, WI
Boston, MA	Minneapolis, MN
Buffalo, NY	Nashville, TN
Chicago, IL	New Haven, CT
Cincinnati, OH	New Orleans, LA
Cleveland, OH	New York, NY
Dallas, TX	Newark, NJ
Denver, CO	Philadelphia, PA
Detroit, MI	Phoenix, AZ
Grand Rapids, MI	Pittsburgh, PA
Guaynabo, PR	St. Louis, MO
Honolulu, HI	San Francisco, CA
Houston, TX	Seattle, WA
Kansas City, MO	Tampa, FL
Los Angeles, CA	Washington, DC

Consult local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and phone number of your nearest field office.

Copies of labor organization annual financial reports, employer reports, labor relations consultant reports, and union officer and employee reports filed for the year 2000 and after can be viewed and printed at www.unionreports.gov. Copies of reports for the year 1999 and earlier can be ordered through the website. For questions on Form LM-10 and/or the instructions, call the Department of Labor National Call Center at: 866-4-USA-DOL (866-487-2365) or email olms-public@dol.gov.

If you would like to receive via email periodic updates from the Office of Labor-Management Standards, including information about the LM forms, enforcement results, and compliance assistance programs, you may subscribe to the OLMS Mailing List from the OLMS website: www.olms.dol.gov.



FEDERAL REGISTER

Vol. 76

Tuesday,

No. 119

June 21, 2011

Part III

Nuclear Regulatory Commission

10 CFR Part 50

American Society of Mechanical Engineers (ASME) Codes and New and Revised ASME Code Cases; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AI35

[NRC-2008-0554]

American Society of Mechanical Engineers (ASME) Codes and New and Revised ASME Code Cases

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The NRC is amending its regulations to incorporate by reference the 2005 Addenda (July 1, 2005) and 2006 Addenda (July 1, 2006) to the 2004 ASME Boiler and Pressure Vessel Code, Section III, Division 1; 2007 ASME Boiler and Pressure Vessel Code, Section III, Division 1, 2007 Edition (July 1, 2007), with 2008a Addenda (July 1, 2008); 2005 Addenda (July 1, 2005) and 2006 Addenda (July 1, 2006) to the 2004 ASME Boiler and Pressure Vessel Code, Section XI, Division 1; 2007 ASME Boiler and Pressure Vessel Code, Section XI, Division 1, 2007 Edition (July 1, 2007), with 2008a Addenda (July 1, 2008); and 2005 Addenda, ASME OMa Code-2005 (approved July 8, 2005) and 2006 Addenda, ASME Omb Code-2006 (approved July 6, 2006) to the 2004 ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code). The NRC is also incorporating by reference (with conditions on their use) ASME Boiler and Pressure Vessel Code Case N-722-1, "Additional Examinations for PWR Pressure Retaining Welds in Class 1 Components Fabricated with Alloy 600/82/182 Materials, Section XI, Division 1," Supplement 8, ASME approval date: January 26, 2009, and ASME Boiler and Pressure Vessel Code Case N-770-1, "Alternative Examination Requirements and Acceptance Standards for Class 1 PWR Piping and Vessel Nozzle Butt Welds Fabricated With UNS N06082 or UNS W86182 Weld Filler Material With or Without Application of Listed Mitigation Activities, Section XI, Division 1," ASME approval date: December 25, 2009.

DATES: This rule is effective July 21, 2011. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Office of the Federal Register as of July 21, 2011.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied for fee publicly available documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this final rule can be found at <http://www.regulations.gov> by searching on Docket ID: NRC-2008-0554.

FOR FURTHER INFORMATION CONTACT: L. Mark Padovan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-1423, e-mail Mark.Padovan@nrc.gov.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Response to Public Comments
 - A. Overview of Public Comments
 - B. NRC Responses to Public Comments
- III. Discussion of NRC Approval of New Edition and Addenda to the Code, ASME Code Cases N-722-1 and N-770-1, and Other Changes to 10 CFR 50.55a
 - Quality Standards, ASME Codes and Institute of Electrical and Electronics Engineers (IEEE) Standards, and Alternatives
 - Applicant/Licensee-Proposed Alternatives to the Requirements of 10 CFR 50.55a
 - Standards Approved for Incorporation by Reference
 - ASME B&PV Code, Section III
 - ASME B&PV Code, Section XI
 - ASME OM Code
 - Reactor Coolant Pressure Boundary, Quality Group B Components, and Quality Group C Components
 - Inservice Testing Requirements
 - Inservice Inspection Requirements
 - Substitution of the Term "Condition" in 10 CFR 50.55a
- IV. Paragraph-by-Paragraph Discussion
- V. Generic Aging Lessons Learned Report
- VI. Availability of Documents
- VII. Voluntary Consensus Standards
- VIII. Finding of No Significant Environmental Impact: Environmental Assessment
- IX. Paperwork Reduction Act Statement
- X. Regulatory and Backfit Analysis

XI. Regulatory Flexibility Certification
XII. Congressional Review Act

I. Background

The ASME develops and publishes the ASME Boiler and Pressure Vessel Code (B&PV Code), which contains requirements for the design, construction, and inservice inspection (ISI) of nuclear power plant components; and the ASME OM Code, which contains requirements for inservice testing (IST) of nuclear power plant components. The ASME issues new editions of the ASME B&PV Code every 3 years and issues addenda to the editions yearly, except in years when a new edition is issued. Periodically, the ASME publishes new editions and addenda of the ASME OM Code. The new editions and addenda typically revise provisions of the Codes to broaden their applicability, add specific elements to current provisions, delete specific provisions, and/or clarify them to narrow the applicability of the provision. The revisions to the editions and addenda of the Codes do not significantly change Code philosophy or approach.

It has been the NRC's practice to establish requirements for the design, construction, operation, ISI (examination) and IST of nuclear power plants by approving the use of editions and addenda of the ASME B&PV and OM Codes (ASME Codes) in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.55a. The NRC approves and/or mandates the use of certain parts of editions and addenda of these ASME Codes in 10 CFR 50.55a through the rulemaking process of "incorporation by reference." Upon incorporation by reference of the ASME Codes into 10 CFR 50.55a, the provisions of the ASME Codes are legally-binding NRC requirements as delineated in 10 CFR 50.55a, and subject to the conditions on certain of the ASME Codes' provisions which are set forth in 10 CFR 50.55a. The editions and addenda of the ASME B&PV and OM Codes were last incorporated by reference into the regulations in a final rule dated September 10, 2008 (73 FR 52730), as corrected on October 2, 2008 (73 FR 52735), incorporating Section III of the 2004 Edition of the ASME B&PV Code, Section XI of the 2004 Edition of the ASME B&PV Code, and the 2004 Edition of the ASME OM Code, subject to NRC conditions.

The ASME Codes are consensus standards developed by participants with broad and varied interests (including the NRC and licensees of nuclear power plants). The ASME's adoption of new editions of and

addenda to the ASME Codes does not mean that there is unanimity on every provision in the ASME Codes. There may be disagreement among the technical experts, including NRC representatives on the ASME Code committees and subcommittees, regarding the acceptability or desirability of a particular Code provision included in an ASME-approved code edition or addenda. If the NRC believes that there is a significant technical or regulatory concern with a provision in an ASME-approved code edition or addenda being considered for incorporation by reference, then the NRC conditions the use of that provision when it incorporates by reference that ASME Code edition or addenda. In some cases, the condition increases the level of safety afforded by the ASME code provision, or addresses a regulatory issue not considered by the ASME. In other instances, where research data or experience has shown that certain Code provisions are unnecessarily conservative, the condition may provide that the Code provision need not be complied with in some or all respects. The NRC's conditions are included in 10 CFR 50.55a, typically in paragraph (b) of that regulation. In an SRM dated September 10, 1999, the Commission indicated that NRC rulemakings adopting (incorporating by reference) a voluntary consensus standard must identify and justify each part of the standard which is not adopted. For this rulemaking, the provisions of the 2005 Addenda through 2008 Addenda of Section III, Division 1, and the 2005 Addenda through 2008 Addenda of Section XI, Division 1, of the ASME B&PV Code; and the 2005 Addenda and 2006 Addenda of the ASME OM Code that the NRC is not adopting, or partially adopting, are previously identified in Section III of this statement of considerations, and in the regulatory and backfit analysis for this rulemaking. The provisions of the ASME B&PV Code, OM Code, and Code Cases N-722-1 and N-770-1 that the NRC finds to be conditionally acceptable, along with the conditions under which they may be applied, are also identified in Section III of this statement of considerations and the regulatory and backfit analysis for this rulemaking.

The ASME Codes are voluntary consensus standards, and the NRC's incorporation by reference of these Codes is consistent with applicable requirements of the National Technology Transfer and Advancement Act (NTTAA). Additional discussion on NRC's compliance with the NTTAA is

set forth in Section VII of this document, Voluntary Consensus Standards.

II. Response to Public Comments

A. Overview of Public Comments

The NRC published a proposed rule for public comments in the **Federal Register** on May 4, 2010 (75 FR 24324). The public comment period for the proposed rule closed on July 19, 2010. The NRC received 22 letters and e-mails from the following commenters (listed in order of receipt), providing about 454 comments on the proposed rule:

1. South Carolina Electric and Gas Company
2. Private citizen, Charles Wirtz
3. Private citizen, Gerry C. Slagis
4. Duke Energy
5. Electric Power Research Institute
6. Nextera Energy
7. IHI Southwest Technologies
8. Private citizen, Gary G. Elder
9. Performance Demonstration Initiative
10. Exelon Corporation
11. American Society of Mechanical Engineers
- 11a. American Society of Mechanical Engineers
12. Westinghouse
13. U.S. Department of Energy
14. Westinghouse
15. Progress Energy
16. PWR Owners Group
17. Nuclear Energy Institute
18. Entergy Operations, Inc. and Entergy Nuclear Operations, Inc.
19. Tennessee Valley Authority
20. Exelon Corporation
21. Dominion Resources Services, Inc.
22. Strategic Teaming and Resource Sharing (STARS)

The number assigned to each commenter is used to identify the sponsor of the comment in the NRC's comment summary in Part B, "NRC Responses to Public Comments," of this document. Most of these comments pertained to the following:

- Suggested revising or rewording conditions to make them more clear.
- Supported incorporation of Code Case N-770 or N-770-1 into 10 CFR 50.55a.
- Supported the proposed changes to add or remove conditions.
- Opposed proposed conditions.
- Supplied additional information for NRC consideration.
- Proposed rewriting/renumbering of paragraphs.
- Asked questions or requested information from the NRC.

Due to the large number of comments received and the length of the NRC's responses, this statement of considerations (SOC) addresses: (i) Responses to the three questions raised by the NRC in the proposed rule; (ii) comments resulting in changes to the

proposed regulations; and (iii) comments raising important issues of interest to stakeholders but which the NRC declined to adopt. A discussion of all comments and the NRC responses is available electronically at the NRC's Library, ADAMS Accession No. ML110280240.

B. NRC Responses to Public Comments

Responses to Specific Requests for Comments

The NRC requested comments on three NRC questions associated with its implementing 10 CFR 50.55a rulemaking process improvements to make incorporating by reference ASME B&PV Code editions and addenda into 10 CFR 50.55a more predictable and consistent:

NRC Question 1. What should the scope of the ASME B&PV Code edition and addenda rulemaking be (*i.e.*, how many editions and addenda should be compiled into a single rulemaking)?

Comment: One commenter stated that the NRC should address every other edition of the ASME Code in subsequent rulemakings (begin rulemaking once every 4 years) as the NRC's current 2-year rulemaking cycle is ambitious, and previous rulemakings have not occurred on this schedule. Three commenters indicated that starting with the 2013 Edition, editions of these Code sections will be published every 2 years (without addenda), and that future rulemakings should occur on a 2-year schedule, starting with the 2013 Edition of these Codes. [4-2, 11a-1; 14-1a; 19-1]

NRC Response: The NRC has decided that future 10 CFR 50.55a rulemakings should incorporate only one later edition of the B&PV and OM Codes at a time, starting with the 2013 Editions of the ASME B&PV Code and the ASME OM Code.

NRC Question 2. What should the frequency of ASME B&PV Code edition and addenda rulemaking be (*i.e.*, how often should the NRC incorporate by reference Code editions and addenda into 10 CFR 50.55a)?

Comment: The regulation currently requires compliance with the latest ASME Section XI Code incorporated by reference in 10 CFR 50.55a just 12 months prior to the start date of subsequent inspection interval. A 4-year publication schedule for 10 CFR 50.55a final rules would be beneficial for the following reasons:

a. This schedule would not be overly burdensome for the NRC, and this may allow for a more predictable process and publication schedule for 10 CFR 50.55a. A 4-year publication schedule would allow for more licensees to use the same

Code of Record for multiple units at each site. This is particularly true for those sites where multiple units were completed within 4 years of the first unit. Use of a common Code of Record at each plant reduces administrative burden for licensees and reduces the risks associated with having to apply different Code requirements simultaneously at the same plant. This recommendation would also benefit the NRC because fewer licensees would request relief to allow the use of a common Code of Record. [4–2]

NRC Response: The NRC disagrees that a 4-year publication schedule to incorporate ASME B&PV Code edition and addenda into 10 CFR 50.55a is necessary for a more predictable process. The NRC performed a Lean Six Sigma review of its 10 CFR 50.55a rulemaking process and implemented improvements to make this rulemaking process more consistent and predictable. The NRC now believes that it can consistently and predictably publish 10 CFR 50.55a rulemakings on a 2-year interval.

The NRC agrees in principal that a 4-year review cycle could possibly reduce the number of requests for relief when licensees use a common code of record for multiple units at a site, and that it is less of an administrative burden to have a common code of record at multiple unit sites. However, reducing the number of requests would depend on the timing of when a particular plant was required to update its inservice inspection (ISI) program in accordance with § 50.55a(g)(4). The option of using a common code of record at multiple units is still available through the use of an alternative in accordance with § 50.55a(a)(3), and the NRC has approved the use of alternatives many times in the past for this purpose.

Comment: As indicated in the draft rule, NRC rulemaking activities are currently on a 2-year cycle. In order for each rulemaking to incorporate by reference the latest published ASME Code editions, this cycle should be maintained and the next NRC new rulemaking would have to begin immediately upon publication of this proposed rule as a final 10 CFR 50.55a rule. [11a–1, 14–1b]

NRC Response: The NRC agrees that future 10 CFR 50.55a rulemakings should occur on a 2-year schedule, starting with the 2013 Editions of the ASME B&PV Code and the ASME OM Code. However, the NRC disagrees that it should begin the next NRC rulemaking upon publication of this

final 10 CFR 50.55a rule. In order to assure that these rulemakings occur consistently and predictably, the NRC is initiating a pilot program to begin the next rulemaking when the camera-ready version of the 2011 Addenda to the 2010 Edition of Sections III and XI of the ASME B&PV Code becomes available. This start date is expected to be about 4 months earlier than the ASME's July 2011 publishing date, and should contribute towards assuring that the NRC is able to publish the rulemaking on a 2-year interval (from ASME's July publication date).

NRC Question 3. In what ways should the NRC communicate the scope, schedule for publishing the rulemakings in the **Federal Register**, and status of 10 CFR 50.55a rulemakings to external users?

Comment: Four commenters stated that the industry would benefit from a predictable publication schedule for final 10 CFR 50.55a rules, regardless of the frequency of subsequent rulemakings. One of these commenters also indicated that, as an alternative, the NRC could consider one of the following options to establishing a predictable publication schedule:

- 10 CFR 50.55a could be amended to allow the use of a limited number of Code editions that have been incorporated by reference in 10 CFR 50.55a, instead of only the latest, provided all applicable conditions are met when using the chosen Code edition.

- 10 CFR 50.55a could be amended to require that licensees update their programs to comply with the latest Code of Record incorporated by reference into 10 CFR 50.55a no more than 36 months prior to the start of the subsequent 120-month inspection interval. [4–2, 11a–1, 14–1c, 19–1]

NRC Response: The NRC acknowledges the industry's representation that it would benefit from a predictable publication schedule for final 10 CFR 50.55a rules. As discussed, the NRC now believes that it can consistently and predictably publish 10 CFR 50.55a rulemakings on a 2-year interval. Thus, the NRC need not consider at this time the alternative options presented by one of the commenters.

Comment: If the NRC believes that a predictable schedule for publication of final 10 CFR 50.55a rules cannot be accomplished, the NRC may want to consider whether the provisions in 10 CFR 50.55a(f)(4)(ii) and (g)(4)(ii) should be amended to allow Owners/Licensees

to update their programs to comply with the latest edition and addenda of the Code incorporated by reference as much as 24 months before the start of a subsequent 120 month interval. [11–1]

NRC Response: The NRC believes it can publish 10 CFR 50.55a rulemakings on a predictable schedule as a result of implementing rulemaking process improvements. Therefore, the NRC need not consider the commenter's proposal at this time.

Re-Designating 10 CFR 50.55a Paragraphs

The NRC proposed that several paragraphs under 10 CFR 50.55a(b)(2) be removed, which would cause gaps in the numbering between the remaining paragraphs. To address the creation of these gaps, the NRC proposed to re-designate (renumber) the remaining paragraphs under 10 CFR 50.55a(b)(2). These proposed re-designations are outlined in Table 1 of this document.

Comment: The proposed renumbering of paragraphs should not be adopted. Renumbering all of the paragraphs, while helping to reduce the number of pages in the rulemaking, does not consider the effort it will take for each end user to update their procedures to reflect the new numbering sequence. Many implementing programs and procedures will include references to the specific paragraph for implementation. Renumbering them will cause many documents to be revised. Recommend that this type of cleanup be considered under a total rewrite of 10 CFR 50.55a rather than doing it under this proposed rule. Suggest that those paragraphs where conditions are removed be designated as "reserved." [4–1, 4–11a, 11–2, 14–2, 19–1, 20–1]

NRC Response: The NRC acknowledges the comments representing that the proposed renumbering of paragraphs under 10 CFR 50.55a(b)(2) will require end users to expend resources to update their procedures to reflect the new numbering sequence. Accordingly, the NRC did not renumber these paragraphs under 10 CFR 50.55a(b)(2) in the final rule. Where the NRC removed paragraphs in the final rule, those paragraphs are designated as "Reserved." To assist readers in understanding the regulatory history of this final rule, Table 1 gives a cross-reference of proposed, current and final regulation paragraph numbering.

TABLE 1—CROSS REFERENCE OF PROPOSED, CURRENT AND FINAL REGULATIONS

Proposed regulation	Current regulation	Description of proposed redesignations	Final regulation
Paragraph (b)(2)(i)	Paragraph (b)(2)(ii)	Redesignate paragraph (b)(2)(ii) as paragraph (b)(2)(i).	Paragraph (b)(2)(ii).
Paragraph (b)(2)(ii)	Paragraph (b)(2)(vi)	Redesignate paragraph (b)(2)(vi) as paragraph (b)(2)(ii).	Paragraph (b)(2)(vi).
Paragraph (b)(2)(iii)	Paragraph (b)(2)(vii)	Redesignate paragraph (b)(2)(vii) as paragraph (b)(2)(iii).	Paragraph (b)(2)(vii).
Paragraph (b)(2)(iv)	Paragraph (b)(2)(viii)	Redesignate paragraph (b)(2)(viii) as paragraph (b)(2)(iv).	Paragraph (b)(2)(viii).
Paragraph (b)(2)(v)	Paragraph (b)(2)(ix)	Redesignate paragraph (b)(2)(ix) as paragraph (b)(2)(v).	Paragraph (b)(2)(ix).
Paragraph (b)(2)(vi)	Paragraph (b)(2)(x)	Redesignate paragraph (b)(2)(x) as paragraph (b)(2)(vi).	Paragraph (b)(2)(x).
Paragraph (b)(2)(vii)	Paragraph (b)(2)(xi)	Redesignate paragraph (b)(2)(xi) as paragraph (b)(2)(vii).	Paragraph (b)(2)(xi).
Paragraph (b)(2)(viii)	Paragraph (b)(2)(xii)	Redesignate paragraph (b)(2)(xii) as paragraph (b)(2)(viii).	Paragraph (b)(2)(xii).
Paragraph (b)(2)(ix)	Paragraph (b)(2)(xiii)	Redesignate paragraph (b)(2)(xiii) as paragraph (b)(2)(ix).	Paragraph (b)(2)(xiii).
Paragraph (b)(2)(x)	Paragraph (b)(2)(xiv)	Redesignate paragraph (b)(2)(xiv) as paragraph (b)(2)(x).	Paragraph (b)(2)(xiv).
Paragraph (b)(2)(xi)	Paragraph (b)(2)(xv)	Redesignate paragraph (b)(2)(xv) as paragraph (b)(2)(xi).	Paragraph (b)(2)(xv).
Paragraph (b)(2)(xii)	Paragraph (b)(2)(xvi)	Redesignate paragraph (b)(2)(xvi) as paragraph (b)(2)(xii).	Paragraph (b)(2)(xvi).
Paragraph (b)(2)(xiii)	Paragraph (b)(2)(xvii)	Redesignate paragraph (b)(2)(xvii) as paragraph (b)(2)(xiii).	Paragraph (b)(2)(xvii).
Paragraph (b)(2)(xiv)(A)	Paragraph (b)(2)(xviii)(A)	Redesignate paragraph (b)(2)(xviii)(A) as paragraph (b)(2)(xiv)(A).	Paragraph (b)(2)(xviii)(A).
Paragraph (b)(2)(xiv)(B)	Paragraph (b)(2)(xviii)(B)	Redesignate paragraph (b)(2)(xviii)(B) as paragraph (b)(2)(xiv)(B).	Paragraph (b)(2)(xviii)(B).
Paragraph (b)(2)(xiv)(C)	Paragraph (b)(2)(xviii)(C)	Redesignate paragraph (b)(2)(xviii)(C) as paragraph (b)(2)(xiv)(C).	Paragraph (b)(2)(xviii)(C).
Paragraph (b)(2)(xv)	Paragraph (b)(2)(xix)	Redesignate paragraph (b)(2)(xix) as paragraph (b)(2)(xv).	Paragraph (b)(2)(xix).
Paragraph (b)(2)(xvi)	Paragraph (b)(2)(xx)	Redesignate paragraph (b)(2)(xx) as paragraph (b)(2)(xvi).	Paragraph (b)(2)(xx).
Paragraph (b)(2)(xvii)	Paragraph (b)(2)(xxi)	Redesignate paragraph (b)(2)(xxi) as paragraph (b)(2)(xvii).	Paragraph (b)(2)(xxi).
Paragraph (b)(2)(xviii)	Paragraph (b)(2)(xxii)	Redesignate paragraph (b)(2)(xxii) as paragraph (b)(2)(xviii).	Paragraph (b)(2)(xxii).
Paragraph (b)(2)(xix)	Paragraph (b)(2)(xxiii)	Redesignate paragraph (b)(2)(xxiii) as paragraph (b)(2)(xix).	Paragraph (b)(2)(xxiii).
Paragraph (b)(2)(xx)	Paragraph (b)(2)(xxiv)	Redesignate paragraph (b)(2)(xxiv) as paragraph (b)(2)(xx).	Paragraph (b)(2)(xxiv).
Paragraph (b)(2)(xxi)	Paragraph (b)(2)(xxv)	Redesignate paragraph (b)(2)(xxv) as paragraph (b)(2)(xxi).	Paragraph (b)(2)(xxv).
Paragraph (b)(2)(xxii)	Paragraph (b)(2)(xxvi)	Redesignate paragraph (b)(2)(xxvi) as paragraph (b)(2)(xxii).	Paragraph (b)(2)(xxvi).
Paragraph (b)(2)(xxiii)	Paragraph (b)(2)(xxvii)	Redesignate paragraph (b)(2)(xxvii) as paragraph (b)(2)(xxiii).	Paragraph (b)(2)(xxvii).
Paragraph (b)(2)(xxiv)	NA	New Paragraph	Paragraph (b)(2)(xxviii).
Paragraph (b)(2)(xxv)	NA	New Paragraph	Eliminated.
Paragraph (b)(2)(xxvi)	NA	New Paragraph	Paragraph (b)(2)(xxix).

Significant Public Comments on the Proposed Rule

A summary of the significant comments, and the NRC's responses to those comments for each 10 CFR 50.55a section or paragraph are set forth in this document. A more comprehensive summary of the comments and the NRC responses are set forth in the NRC's Analysis of Public Comments document (ADAMS Accession No. ML110280240).

10 CFR 50.55a(b)(1)(iii) Seismic Design of Piping

Comment: The NRC received comments from a number of external stakeholders that stated the proposed condition in § 50.55a(b)(1)(A) should be deleted. The comments' bases for deleting the proposed condition included the results of extensive research efforts on ferritic steels operating at high temperature. The results of this research were intended to provide sufficient bases to eliminate the NRC's concern on the B₂' stress indices

for Class 1 elbows and tees, on which the proposed condition) would have centered. [11–6b; 14–6b; 19–1]

NRC Response: Based on the NRC's review of the information provided in the public comment, the NRC is not including the proposed condition in § 50.55a(b)(1)(A) on the B₂' stress index for Class 1 elbows and tees in this final rule. The information presented by the commenters adequately absolves the NRC's previously held concerns on the use of these stress indices in the seismic design of Class 1 piping.

Comment: A minor modification to the proposed condition in § 50.55a(b)(1)(iii)(B) should be adopted to provide specificity on how the condition should be applied. [14–6c]

NRC Response: The NRC agrees with the comment and the final rule language includes the modification suggested by the comment. The NRC agrees with the comment given that the modification eliminates potential ambiguity by clearly articulating when the NRC's condition in § 50.55a(b)(1)(iii)(A) of the final rule language applies, with respect to the use of the provisions of Subarticle NB–3200 of the ASME Code.

Comment: The comments received on the proposed addition of the condition 10 CFR 50.55a(b)(1)(iii)(C) pertained to the D_o/t limitation for the seismic design of piping. The scope of the proposed condition in § 50.55a(b)(1)(iii)(e) should be limited based on the fact that the ASME Code inherently captures the proposed condition in many instances in its current revision. [11–6d; 14–6d; 19–1]

NRC Response: The NRC agrees with the comments based on the fact that the D_o/t limitation is apparent throughout a majority of the affected ASME Code sections. In the final rule, paragraph (b)(1)(iii)(C) is modified to limit the scope of the proposed condition to those portions of the ASME Code which do not provide the inherent limitation on maintaining D_o/t to a value of less than 40.

10 CFR 50.55a(b)(1)(vii) Capacity Certification and Demonstration of Function of Incompressible-Fluid Pressure-Relief Valves

Comment: The NRC should reconsider its position to prohibit the use of paragraph NB–7742. The commenter pointed out that NB–7742 addresses test pressures that will exceed the test facility limits and reduces the number of functional tests for specific valve designs. With advances in technology, specialty valves were being developed that would be a specific size, operate at a specific set pressure, and have a required capacity. When only one such valve is installed in a nuclear power plant, the manufacturer would have to build at least two additional production valves so three valves could be tested per NB–7732.2, and/or a multi-million dollar test facility would have to be built that had the required test pressure capability. Since NB–7732.2 covers a range of conditions/applications for valve testing, the need to address specialty valves that did not have a range in size and set pressure, or had minimal range became evident. NB–7742(a)(1) and NB–7742(a)(2) were

added to address these applications. Manufacturing unnecessary production valves and building new test facilities are not economical options for the nuclear power industry. Therefore, the commenter requested that the NRC reconsider its position to prohibit the use of paragraph NB–7742. [14–8]

NRC Response: Upon reconsideration, the NRC agrees in general with the comment that NB–7742 provides an acceptable methodology to test incompressible-fluid, pressure-relief valves that will exceed the test facility limits and addresses reducing the number of functional tests for specific valve designs. The NRC has identified no issues with performing tests at less than the highest value of the set-pressure range for incompressible-fluid, pressure-relief valves and finds these new requirements for Class 2 and 3 components acceptable as described in paragraphs NC–7742 and ND–7742. However, the NRC has identified words that were inadvertently left out of the Code during final printing of paragraph NB–7742 for Class 1 components. The parallel structure of the counterpart paragraphs (NC–7742 and ND–7742) reveal that the words “for the design and the maximum set pressure” are missing for paragraph NB–7742(a)(2). Without these words, paragraph NB–7742(a)(2) is confusing, illogical, and could lead to a non-conservative interpretation of the required test pressure for the new Class 1 incompressible-fluid, pressure-relief valve designs. For these reasons, paragraph (b)(1)(vii) of the final rule reflects a change to include a condition allowing use of paragraph NB–7742 when the corrected language intended by the Code is used.

10 CFR 50.55a(b)(2)(viii) Examination of Concrete Containments (Proposed Rule Paragraph (b)(2)(iv))

Comment: Proposed rule paragraphs (b)(2)(iv)(B), (b)(2)(iv)(C), (b)(2)(iv)(D)(1), and (b)(2)(iv)(D)(2) should be deleted since they are not mandated by the introductory text of paragraph (b)(2)(iv). [20–4]

NRC Response: The NRC disagrees with the comment. The proposed rule inadvertently removed the language in the introductory text of paragraph (b)(2)(iv) that mandates the conditions in the mentioned paragraphs. Final rule paragraph 10 CFR 50.55a(b)(2)(viii) added back the removed language in the introductory text to correct this unintended administrative error.

10 CFR 50.55a(b)(2)(ix) Examination of Metal Containments and the Liners of Concrete Containments (Proposed Rule Paragraph (b)(2)(v))

Comment: The first part of the condition in the proposed rule paragraph (b)(2)(v)(A) should not be applied to the 2006 through the 2008 Addenda, which incorporated requirements into IWE–2420(c) for evaluating the acceptability of inaccessible areas when conditions existed in accessible areas that could indicate the presence or result in degradation to such inaccessible areas. Only the second part of the condition requiring specific information relative to inaccessible areas be submitted in the ISI Summary Report should apply to these addenda. [11–15b; 14–15b; 19–1]

NRC Response: The NRC agrees with the comment since the first part of the condition in proposed rule paragraph (b)(2)(v)(A) has been incorporated into the 2006 Addenda through 2008 Addenda of the Code. As a result of the comment, in final rule paragraph (b)(2)(ix)(A), the NRC has restructured the condition into two separate paragraphs designated (b)(2)(ix)(A)(1) and (b)(2)(ix)(A)(2) and revised the introductory text such that the condition in paragraph (b)(2)(ix)(A)(1) that addresses the requirement for the evaluation of inaccessible areas, is not required to be applied to Subsection IWE, 2006 Addenda through the 2008 Addenda.

Comment: The new condition in the proposed rule paragraph (b)(2)(v)(J), applicable to the use of IWE–5000 of the 2007 Edition with the 2008 Addenda, should not apply to metallic shell and penetration liners of Class CC components because these liners do not serve a structural integrity function which, for Class CC containments, is provided by the reinforced or post-tensioned concrete structure. The containment pressure test requirements in IWL–5000 are sufficient to ensure that the structural integrity of the Class CC component is demonstrated following major modifications. [4–12c; 4–12f; 11–15c; 11–15g; 14–15c; 14–15g; 19–1]

NRC Response: The NRC agrees with the basis of the comment that the system pressure test requirements of IWL–5000 are adequate to demonstrate both structural and leak-tight integrity of the repaired Class CC containment pressure retaining components following a major modification. Specifically, the requirements in IWL–5200 to perform a containment pressure test at design basis accident pressure, and to perform surface examinations of the repaired

area and specified additional/extended examinations and response measurements, will demonstrate structural integrity of the repaired Class CC concrete containment. The leakage test requirements in IWL-5230 will demonstrate leak-tight integrity of the repaired area of the metallic shell or penetration liner of Class CC containments. As a result of the comment, the final rule paragraph (b)(2)(ix)(J) is revised to indicate that the condition applies only to Class MC pressure-retaining components and not to Class CC components.

Comment: The new condition in proposed rule paragraph (b)(2)(v)(J), applicable to use of IWE-5000 of the 2007 Edition with the 2008 Addenda for major containment modifications, allows for an alternative to an Appendix J Type A test required by the condition following "major" modifications. However, performing a "short-duration structural test" as proposed would satisfy the condition in 10 CFR 50.55a, but would not satisfy the requirements imposed by 10 CFR Part 50, Appendix J, Option A. As a result, a "short duration structural test" cannot be performed in lieu of a Type A Test, unless a licensee seeks an exemption from the Appendix J test requirement, or 10 CFR part 50, Appendix J, Option A is revised to address the proposed alternative "short-duration structural test." [4-12b; 11-15i; 14-15i; 19-1]

NRC Response: The NRC agrees with the comment to the extent that when a licensee is implementing Option A of 10 CFR part 50, Appendix J, the alternative short duration structural test in the new condition in proposed rule paragraph (b)(2)(v)(J) cannot be performed in lieu of the Type A test required by the condition without seeking an exemption. The NRC's agreement is based on the fact that an inconsistency would exist between the requirement in the proposed rule paragraph (b)(2)(v)(J) and the existing requirements under Special Testing Requirements in paragraph IV.A of 10 CFR part 50, Appendix J, Option A. This inconsistency would exist due to the fact that the current requirements in Appendix J, Option A, would require a Type A test following a major containment modification, while the proposed requirement would also allow an alternative "short duration structural test." The latter cannot be performed in lieu of a Type A test, thus leading to an inconsistency which could only be reconciled by an exemption. Paragraph IV.A of 10 CFR part 50, Appendix J, Option A does not specify any alternative structural test because the Type A test would demonstrate both

structural and leak tight integrity of the repaired containment.

The NRC disagrees with the comment, in part, given that for the vast majority of licensees implementing Option B of 10 CFR part 50, Appendix J, the argument could be made that containment modifications are implemented under the Inservice Inspection Program in accordance with ASME Section XI, Subsection IWE (for Class MC containments) pursuant to 10 CFR 50.55a(g)(4). Therefore, it could be argued that the system pressure testing requirements in IWE-5000 apply following containment modifications and not those in paragraph IV.A of 10 CFR part 50, Appendix J, Option A. Prior to the 2007 Edition of Section XI of the ASME B&PV Code, Article IWE-5000 referenced paragraph IV.A of 10 CFR part 50, Appendix J, Option A, for the leakage test requirements following containment modifications. By referencing the Appendix J, Option A, requirements, Article IWE-5000 indirectly required a Type A test to be performed following a major containment modification. Since the Type A test requires pressurization of the entire containment to the design basis accident pressure (P_a), it would provide a verification of both the leakage integrity and structural integrity of repaired containment. However, Article IWE-5000, as modified in the 2007 Edition and later addenda, provides a licensee the option of performing only a local bubble test of the brazed joints and welds affected by the repair even for major modifications. This provides a verification of local leak-tightness of the repaired area, but does not provide a verification of global structural integrity of the repaired structure, and hence, the need for the new condition to perform a Type A test following a major modification.

Based on this discussion, the NRC has determined that the new condition in the final rule paragraph (b)(2)(ix)(J) only addresses the deficiency identified in Article IWE-5000, and does not include the provisions for an alternate short-duration structural test in the new condition.

Comment: The actions specified in (b)(2)(v)(J)(1), (b)(2)(v)(J)(2) and (b)(2)(v)(J)(3), as part of the alternate short duration structural test, of the new condition in the proposed rule paragraph (b)(2)(v)(J), applicable to the use of IWE-5000 of the 2007 Edition with the 2008 Addenda for Class MC components, should be modified as below.

- The actions described in (b)(2)(v)(J)(1) should not apply to the

2007 Edition with the 2008 Addenda of ASME Code, Section XI.

- The condition in (b)(2)(v)(J)(2) should not apply because IWE-5223 and IWE-5224 already provide adequate test requirements to assure essentially zero leakage.

- The actions described in (b)(2)(v)(J)(3) would prohibit the conduct of the pressure test at a pressure less than P_a . The 10 CFR part 50, Appendix J, Type A Test is permitted to be conducted at a test pressure of at least 0.96 P_a . [4-12d, 4-12e, 11-15d, 11-15e, 11-15f, 14-15d, 14-15e, 14-15f, 19-1]

NRC Response: The NRC agrees with the comment because:

(i) The nondestructive examination of the repair welds specified in paragraph (b)(2)(v)(J)(1) is typically required to be performed as part of the repair process;

(ii) The provisions of IWE-5223 and IWE-5224 of the 2007 Edition with the 2008 Addenda include the soap bubble or equivalent leakage test specified in paragraph (b)(2)(v)(J)(2) and are adequate to assure essentially zero leakage through the repair welds or joints; and

(iii) The action specified in paragraph (b)(2)(v)(J)(3) required the entire containment to be pressurized to the peak calculated design basis accident pressure (P_a) whereas a Type A test conducted in accordance with ANSI/ANS 56.8 may be performed at a pressure between 0.96 P_a and 1.1 P_a .

However, the testing provisions of IWE-5223 and IWE-5224 of the 2007 Edition with the 2008 Addenda are not adequate to demonstrate global structural integrity of the repaired Class MC containment, which is essentially the deficiency that is sought to be addressed by the new condition. In the context of IWE-5000, it is the Type A test that would provide a verification of both structural and leak-tight integrity following a major modification. As such, the NRC determined that the new condition only addresses the deficiency in the provisions of Article IWE-5000 and did not include the proposed alternate short-duration structural test provision in the condition in the final rule.

Comment: The new condition in proposed rule paragraph (b)(2)(v)(J) provides a general definition of "major" containment modifications as repair/replacement activities such as replacing a large penetration, cutting a large opening in the containment pressure boundary to replace major equipment such as steam generators, reactor vessel heads, pressurizers, or other similar modifications. This new condition does

not clearly define what constitutes a “major” modification or repair/replacement activity for containment structures and that the lack of a clear definition will cause potential confusion and possible conflict with requirements of 10 CFR part 50, Appendix J, paragraph IV.A. [4–12a, 11–15h, 14–15h, 19–1]

NRC Response: The NRC disagrees with the comment. The proposed rule paragraph (b)(2)(v)(J) provides a definition of a “major” modification, which is qualitative but based on citing specific examples of repair/replacement activities that have typically been performed extensively among operating power reactors historically and have been consistently considered as major modifications by the NRC staff as well as licensees. The NRC acknowledges that the definition provided for “major” modification in the proposed rule is somewhat more explicit than the language used in 10 CFR part 50, Appendix J, Option A, paragraph IV.A, in that the cited paragraph IV.A simply uses the term “major modification” without any explicit description, but the intent is consistent. Based on this discussion, the NRC has retained the qualitative definition of major modifications in the final rule. No change was made to the final rule as a result of this comment.

10 CFR 50.55a(b)(2)(xi) (Proposed Rule Paragraph (b)(2)(vii))

Comment: Referencing later versions of Appendix VIII should be delayed and replaced with a mandatory, industry wide, version and implementation date. In a December public meeting with the one of the commenters (PDI), the commenter clarified his comment as requesting the NRC to delay by 18 months the date on which Appendix VIII of the 2007 Edition and 2008 Addenda becomes effective for purposes of updating licensees’ 10-year inservice inspection interval. The commenter explained that an 18-month delay is necessary to avoid an undue burden on those licensees who have only 12 months to update their inservice inspection program for the next 10-year inservice inspection interval (as is required under § 50.55a). [9–1; 9–2; 10–1; 10–2; 20–2]

NRC Response: The NRC agrees with the comments that there may be an undue burden on those licensees who have only 12 months to update their inservice inspection program to comply with Appendix VIII for the next 10-year inservice inspection interval. Accordingly, the NRC is revising the language of the final rule to provide at least 18 months for a specified set of

licensees to update and begin implementation of the 2007 Edition and 2008 Addenda versions of Appendix VIII in their next inservice inspection interval. This set of licensees are those whose next inservice inspection interval must begin to be implemented during the period between 12 through 18 months after the effective date of the final rule, and therefore would otherwise be required to implement the 2007 Edition and 2008 Addenda versions of Appendix VIII (providing them less than 18 months to comply with the provisions of the 2007 Edition and 2008 Addenda versions of Appendix VIII). For these licensees, the final rule provides a delay of 6 months in the implementation of Appendix VIII *only* (i.e., these licensees will still be required to update and implement the inservice inspection program during the next inspection interval without delay). Other licensees, whose next inservice inspection interval commences more than 18 months after the final date of the rule, will have sufficient time to develop their programs for the next inservice inspection interval and are not affected by this provision of the final rule.

The NRC disagrees with the portions of the comments requesting that the NRC mandate the use of later versions of Appendix VIII for all licensees. The comments did not provide a technical or regulatory justification for imposing such a backfit (a uniform date of implementation would be regarded as a backfit because it departs from the current regulatory approach of a ten-year inservice inspection program interval). In addition, the NRC notes that § 50.55a(g)(4)(iv) currently allows licensees to voluntarily comply with the inservice inspection requirements of more recent editions and addenda which the NRC has approved (via incorporation by reference into § 50.55a). Accordingly, the NRC declines to adopt the proposal. No change was made to the final rule as a result of this portion of the comment.

Comment: The requirements for scanning from the austenitic side of the weld should be revised to accommodate certain exceptions such as austenitic welds with no austenitic sides or austenitic welds attached to cast austenitic components. [20–3]

NRC Response: NRC agrees that paragraph (b)(2)(xv)(A)(2) should address the case of an austenitic weld which has no austenitic base material side. An austenitic weld with no austenitic sides cannot be qualified from an austenitic side. However, qualification from the austenitic side of the weld demonstrates a higher degree

of proficiency than from the ferritic side of the weld. Therefore, an existing ASME Code, Section XI, Appendix VIII, Supplement 10, Qualification Requirements for Dissimilar (DM) Metal Welds, qualification may be expanded for austenitic welds with no austenitic sides. This expansion of the Supplement 10 qualification would require implementing a separate performance demonstration add-on to include samples where the austenitic weld is flanked by ferritic base material. The NRC disagrees that special consideration should be given to components with cast austenitic material on one side because single-side examination of austenitic welds attached to cast stainless steel components is outside the scope of the current qualification program. For these reasons, paragraph (b)(2)(xv)(A)(2) in the final rule is revised to include an add-on qualification for austenitic welds with no austenitic side to an existing Supplement 10 qualification.

10 CFR 50.55a(b)(2)(xii) (Proposed Rule Paragraph (b)(2)(viii))

Comment: The condition on Appendix VIII single-side ferritic vessel and piping and stainless steel piping examinations was addressed in the 2005 Addenda of ASME Code and should be removed. [11–17; 14–17a; 19–1]

NRC Response: The NRC agrees that the condition should not apply to the 2007 Edition and 2008 Addenda because the condition was fully addressed in the 2007 Edition of Section XI. However, the condition is necessary through the 2006 Addenda because of changes within referenced Supplements 5 and 7 in I–3000. For these reasons, paragraph (b)(2)(xvi) is revised in this final rule to remove the condition from the 2007 Edition and 2008 Addenda but retains the condition through the 2006 Addenda.

10 CFR 50.55a(b)(2)(xiv)(C) (Proposed Rule Paragraph (b)(2)(x))

Comment: 10 CFR 50.55a(b)(2)(xiv)(C) should be revised to read: “When applying editions and addenda prior to the 2005 Addenda of Section XI licensees qualifying visual examination personnel for VT–3 visual examination under paragraph IWA–2317 of Section XI.” The basis for this recommendation is that IWA–2317 of the 2004 Edition does not contain the requirements to demonstrate the proficiency of the training by administering an initial qualification examination and administering subsequent examinations on a 3-year interval. [20–5]

NRC Response: The NRC agrees with the commenter that the 2004 Edition

and earlier editions and addenda do not contain the requirements to demonstrate the proficiency of the training and the commenter's proposed wording is clearer. Paragraph (b)(2)(xviii)(C) of the final rule has been revised to reflect the commenter's proposed wording.

10 CFR 50.55a(b)(2)(xv) (Proposed Rule Paragraph (b)(2)(xi))

Comment: Substitution of ultrasonic (UT) examinations performed in accordance with Section XI, Appendix VIII for radiographic (RT) examinations should be acceptable for repairs. ASME Code has already approved three Code Cases for UT in lieu of RT and is in the process of approving a fourth Code Case. [4–16; 7–1; 11–20b; 14–20; 19–1]

NRC Response: The NRC disagrees with the comment. Section III RT examinations are for verifying the soundness of the full weld volume. In Section XI, some welds do not have defined examination volumes, and for the welds having defined examination volumes, only portions of the volume are examined. Appendix VIII qualifications are demonstrated on the weld volume defined in Section XI; the qualifications are tailored for detection and sizing cracks propagating from the inner vessel or pipe surfaces. The NRC's concerns with UT in lieu of RT are presented in the statement of considerations published in the **Federal Register** on October 27, 2006, (71 FR 62947) pertaining to Code Case N-659 which was not approved for use in Regulatory Guide (RG) 1.193, Revision 2. The NRC did not review the other two ASME approved code cases. The NRC will review the fourth code case and associated documentation after ASME approval. No change was made to the final rule as a result of this comment.

Comment: The proposed rule implied UT was better suited for detecting planar flaws associated with inservice degradation than volumetric flaws, and not effective for volumetric flaws with large openings. Further, few studies have been done to demonstrate effectiveness of RT in a manner comparable to the way the effectiveness of UT has been demonstrated via ASME, Section XI, Appendix VIII. [7–2]

NRC Response: The NRC agrees that few studies have been done to demonstrate the effectiveness of RT in a manner comparable to the way the effectiveness of UT has been demonstrated via ASME, Section XI, Appendix VIII. In particular, there are limited studies that compare the effectiveness of UT vs. RT on fabrication type flaws vs. service-induced flaws for welds found in nuclear power plants. Until such time as studies are complete,

the NRC will remain silent on the ability of UT to detect fabrication type (*i.e.*, volumetric) flaws, as well as comparing the abilities of UT and RT. No change was made to the final rule as a result of this comment.

Comment: UT should be allowed for materials where it is as effective, or more effective, than RT. The comment is specifically targeted at UT on cast stainless steel components. [7–3]

NRC Response: Based on a recent study PNNL-19086, "Replacement of Radiography with Ultrasonics for the Nondestructive Inspection of Welds—Evaluation of Technical Gaps—An Interim Report," (ADAMS Accession No. ML101031254), the NRC believes that the effectiveness of UT in lieu of RT has not been established. To address the NRC's concerns, the NRC believes research must be conducted to:

- Compare the flaw detection capabilities of UT and RT;
- Assess parameters such as false call rates;
- Assess qualification and acceptance standards;
- Assess the effectiveness and reliability of UT and RT for construction, preservice and inservice inspection;
- Assess the interchangeability of UT and RT; and
- Determine the state-of-the-art with regard to digital radiography.

Therefore, no change was made to the final rule as a result of this comment.

Comment: While UT requires more access and may require more weld surface preparation area than RT, consideration should be given to peripheral benefits of using UT associated with less work area restrictions, no risk of radiation exposure, no RT source storage issues, and reduced examination time. [7–4]

NRC Response: The NRC disagrees with this comment. While benefits may exist, the NRC believes that examination and qualifications concerns must be addressed first to establish effectiveness and reliability of UT in lieu of RT. No change was made to the final rule as a result of this comment.

Comment: UT systems needing to undergo a Section XI, Appendix VIII-style demonstration and qualification program for construction flaws prior to use is illogical for replacing RT systems that have not been subjected to a similar demonstration and qualification program. [7–5]

NRC Response: The NRC disagrees with the comment. Based on study PNNL-19086, the NRC believes that the effectiveness of UT in lieu of RT has not been established. Accordingly, the NRC will be conducting research as

explained in the NRC response to comment 7–3. Though RT is not subject to a rigorous qualification program at this time, implementation of RT on new construction or repair welds in conjunction with application of the qualified UT often performed for pre-service inspections, provides a greater assurance of quality and safety than if only one examination technique was implemented. Until such time as the NRC has completed its evaluation of UT and RT for nuclear power plant components, the NRC will not allow substitution of UT when RT is prescribed for the examination. No change was made to the final rule as a result of this comment.

Comment: V-path application with UT examination may not be applicable for all metals where UT examinations are allowed. The NRC should consider approving the substitution of UT for RT with specific conditions or limitations, such as:

(1) UT may not be used in lieu of RT for examination of cast stainless steel or austenitic stainless steels and nickel alloys where only single-sided access is available;

(2) When UT is used in lieu of RT, the acceptance standards of ASME Section XI IWA-3000 shall be used in lieu of the construction code acceptance standards; and

(3) Encoded or automated UT shall be used to create a permanent record which would allow multiple analysis reviews as well as document the results for comparison with future examinations. [7–6]

NRC Response: The NRC believes that the effectiveness of UT in lieu of RT has not been established. Industry studies have been initiated to evaluate NRC concerns with UT in lieu of RT. The NRC will consider the results from these studies in future reviews. Therefore, proposed paragraph (b)(2)(xv) pertaining to IWA-4520(b)(2) and IWA-4521 is adopted without change in final rule paragraph (b)(2)(xix). No change was made to the final rule as a result of this comment.

Comment: With regard to paragraph (b)(2)(xv), clarify whether the substitution of ASME Section V ultrasonic examination method by an Appendix VIII ultrasonic examination method is allowed by the provisions of IWA-2240 of the 1997 Addenda as specified in this paragraph's condition. [20–6]

NRC Response: The NRC disagrees with the comment, because it is not the NRC's regulatory responsibility to clarify the ASME Code. No change was made to the final rule as a result of this comment.

10 CFR 50.55a(b)(2)(xvii)(B) (Proposed Rule Paragraph (b)(2)(xiii))

Comment: Consideration should be given to deleting this condition entirely as it is inconsistent with the unconditional approval of Code Case N-652-1 in NRC RG 1.147, Rev 15, which does not include Item B7.80 or any provisions for examination of CRD bolting. [2-2]

NRC Response: The NRC agrees that Item No. B7.80 was deleted in the 1995 Addenda of Section XI. The NRC also agrees that the existing condition is inconsistent with the NRC unconditional approval of Code Case N-652-1 which eliminates Item No. B7.80 requirements. The NRC also believes that Examination Category B-G-2 contains examination requirements for all Class 1 pressure retaining bolting 2 inches and less in diameter to provide reasonable assurance of their structural integrity. For these reasons the NRC agrees with the comment. Final rule paragraph (b)(2)(xxi) reflects a change to eliminate the condition that provisions of Table IWB-2500-1, Examination Category B-G-2, Item B7.80, that are in the 1995 Edition are applicable only to reused bolting when using the 1997 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section.

10 CFR 50.55a(b)(2)(xxiv) (Proposed Rule Paragraph (b)(2)(xx))

Comment: The NRC condition, which would place conditions on the use of Equation (2) in A-4300(b)(1) of Nonmandatory Appendix A of Section XI, should be removed because the condition would result in more conservative crack growth rates to be computed when R-ratio (*i.e.*, K_{min}/K_{max}) is negative. The basis for 1.12 S_f factor was established from lab data for $R < 0$ and considers crack closure effects. [11-23; 14-23; 19-1]

NRC Response: The NRC disagrees with the comment. The NRC has reviewed the laboratory test data upon which this provision was based, and concludes that it is insufficient to firmly establish the Section XI, Appendix A approach when the R-ratio is negative.

The test data reported in the 1977 ASME Pressure Vessels and Piping Conference paper, "High Stress Crack Growth—Part II, Predictive Methodology Using a Crack Closure Model," which serves as the basis for the ASME Code, Section XI, Appendix A approach, consists of only 10 test data points for $-1.5 < R < 0$, and one of those data points shows a trend opposite of the others. Although this data was produced from tests covering

a limited R value range, it is used to support the application of the ASME Code, Section XI, Appendix A approach for a much wider range of R, (*i.e.*, all $R < 0$).

Further, in ASME Code, Section XI, Appendix A applications, the generic, lower-bound material property values from ASME Code, Section II may be used. If the lower bound ASME Code, Section II generic flow stress (σ_f) for a material is less than the material's actual σ_f , the calculation in accordance with ASME Code, Section XI, Appendix A for $R < 0$ will show that $K_{max} - K_{min} \leq 1.12 \sigma_f \sqrt{\pi a}$ and prompt a wrongful reduction of ΔK_I where full ΔK_I should be used. This potential non-conservatism in the use of the ASME Code, Section XI, Appendix A approach, along with the issues cited above regarding the available test data, calls into question the generic applicability of the ASME Code, Section XI, Appendix A approach.

For these reasons, the NRC disagrees with the comment. No change was made to the final rule as a result of the comment.

10 CFR 50.55a(b)(2)(xxv) (Proposed Rule Paragraph (b)(2)(xxi))

Comment: Qualitative arguments based on a deterministic approach stated the current provision in Table E-2 for a crack size up to 1 inch deep is sufficient based on:

(1) Real flaw sizes in vessels are closer to a depth of approximately 0.10 inch deep or less based on actual vessel inspection data;

(2) Use of ASME Code, Section XI, Appendix VIII, and Electric Power Research Institute (EPRI) Performance Demonstration Initiative (PDI) provides continuous verification that the beltline region welds are either free of defects larger than approximately 0.10 inch or that they are documented and recorded, and;

(3) Additional conservatism exists in the use of a lower bound reference toughness curve for prevention of crack initiation for these reference flaws. [11-24; 11-24; 16-17; 16-18; 16-19; 16-20; 17-2; 17-3; 17-4; 17-5; 17-9; 17-11; 19-1; 20-8; 20-11; 20-12; 20-13; 21-2; 21-3; 21-4; 21-5; 21-6 and 21-7]

Quantitative results based on a probabilistic approach demonstrate that the current Appendix E approach provides an appropriate conservative methodology following an unanticipated transient. The Pressurized Water Reactor Owners Group (PWROG) has provided a risk-informed assessment of Appendix E, which indicated that by setting the core

damage frequency (CDF) to $1E-6$, the resulting pressure versus ($T - RT_{NDT}$) curve bounds the corresponding Appendix E curve for both the PWR unanticipated isothermal pressure events and the pressurized cool-down events, where T is the reactor pressure vessel (RPV) coolant temperature and RT_{NDT} is the nil-ductility reference temperature of the limiting RPV material. [16-21]

NRC Response: The commenter's qualitative arguments based on the deterministic approach involve extensive discussions. However, the bottom line is the same as for Comments 11 and 14. Hence, the NRC will respond to only selective parts of the comments based on the deterministic approach to clarify its position. This is appropriate because the NRC's final position is not based on the qualitative, deterministic fracture mechanics (FM) arguments, but on the quantitative, probabilistic fracture mechanics (PFM) results provided by the PWROG.

The NRC agrees with most of the qualitative arguments based on the deterministic FM approach. However, the NRC's final position to accept ASME Code, Section XI, Appendix E without the proposed conditions is not because of these arguments, but rather because of the supporting quantitative PFM results provided by the PWROG.

Although most of the qualitative arguments based on the deterministic FM approach have merit, they can only demonstrate that the probability of having a flaw close to $1/4T$ in size is very low. They cannot rule out that such a large flaw could exist. This observation is consistent with a key statement regarding a large flaw in NUREG-1806, "Technical Basis for Revision of the Pressurized Thermal Shock (PTS) Screening Limit in the PTS Rule (10 CFR 50.61)." NUREG-1806 states "It should also be noted that the empirical data used as the primary evidence to establish the distribution of embedded weld flaws do not, and cannot, provide any information about the maximum size a flaw can be."

The final PTS rule (75 FR 13) published on January 4, 2010, is based on a PFM analysis using a weld flaw distribution with a cutoff flaw depth close to $1/4T$ of the RPV wall, indicating that although the $1/4T$ flaw has a low probability of existence it is prudent to still consider it.

The FM analyses in both ASME Code, Section XI, Appendix G and ASME Code, Section XI, Appendix E are based on postulated flaws using linear elastic FM in a deterministic approach. It is appropriate to assume different margins for these two types of analyses to

account for the very different occurrence frequencies of the two events. However, it is too aggressive to change the fundamental flaw size assumption simply based on different event frequencies. Further, both appendices are for all RPVs, including the one with the worst combination of transients (for the Appendix E analysis), largest undetected flaw size, and worst degradation in fracture toughness. Therefore, unless a PFM approach is used which accounts for a large size flaw with its low probability, it is prudent that the fundamental flaw size assumption remains the same in these two deterministic FM analyses. The PWROG provided such a PFM approach in its response.

The PWROG performed a risk-informed assessment of Appendix E using the Fracture Analysis of Vessels—Oak Ridge (FAVOR) Code; the same tool used in the PFM analyses supporting the final PTS rule. Based on a selected PWR and BWR RPV having the highest RT_{NDT} of the limiting RPV material and a typical beltline fluence model, the PWROG generated a pressure versus ($T - RT_{NDT}$) curve for each of the two RPVs by setting the CDF to $1E-6$. The analytical results showed that the PWROG's PFM results bounds the corresponding Appendix E curve for both the unanticipated isothermal pressure events and the pressurized cool-down events. Since (1) the PFM methodology is consistent with the PTS rule's underlying methodology, in which large flaws are considered statistically, and (2) the resulting pressure versus ($T - RT_{NDT}$) curve bounds the corresponding curve based on the current Appendix E approach, the NRC concludes that the current Appendix E methodology, without the NRC's proposed condition, provides an appropriate conservative methodology for evaluating RPV integrity following an unanticipated transient that exceeds the operational limits in PWR plant operating procedures.

For these reasons, the NRC agrees with the comment based on the PFM analyses that the current ASME Code, Section XI, Appendix E analysis is appropriate. The proposed conditions placed on the use of ASME Code, Section XI, Appendix E in the proposed rule are, therefore, not included in the final rule.

Comment: Section E-1200 is useful and conservative as is, and prohibiting the use of Section E-1200 will ultimately result in added utility burden or loss of generation because of the additional time required to perform analysis under Section E-1300. It is estimated that a Section E-1200

evaluation can be completed in hours while a Section E-1300 evaluation may require days or weeks. Furthermore, use of a 1/4T flaw size can produce unacceptable analytical results, even though crack initiation has not occurred, thereby complicating the resolution process following a fairly minor thermal transient or overpressure event. [11-24, 14-24, 17-11, 19-1, 21-7]

NRC Response: The NRC agrees with this comment based on the PFM Analysis provided by the PWROG. The final rule does not include the condition of paragraph (b)(2)(xxv) from the proposed rule.

Comment: The NRC should reconsider the change specifying “* * * that Section E-1200 is not acceptable.” The intent of Section E-1200 is to provide licensees a conservative and yet simple screening method that can be used to immediately judge whether a reactor vessel can be returned to service or whether a more in-depth analysis is needed prior to returning the reactor vessel to service following an unanticipated event. The evaluation procedures in Appendix E, Paragraphs E-1200 and E-1300, provide adequate safety margins for evaluating reactor pressure vessel integrity following an unanticipated event that results in pressures and temperatures outside the limits established for normal operation. Additionally, Appendix E is consistent with risk-informed acceptance criteria for normal operating and unanticipated events. Consequently, modifying Appendix E as proposed is unnecessary and disallowing use of Section E-1200 will result in an undue hardship without any compensating increase in safety. [20-7]

NRC Response: The NRC agrees with this comment based on the PFM Analysis provided by the PWROG. The final rule does not include the condition of paragraph (b)(2)(xxv) from the proposed rule.

10 CFR 50.55a(b)(2)(xxvi) (Proposed Rule Paragraph (b)(2)(xxii))

Comment: If the NRC intends to require that Risk-Informed ISI (RI-ISI) Programs comply with RG 1.178, RG 1.200, and NRC Standard Review Plan 3.9.8, then in lieu of the proposed condition in paragraph (b)(2)(xxvi), the proposed condition should specify that use of Nonmandatory Appendix R is acceptable, provided licensees comply with these applicable RGs and the Standard Review Plan 3.9.8. [4-18; 11-25; 14-25; 19-1]

NRC Response: The NRC disagrees with the comment and believes that RI-ISI programs developed in accordance

with Nonmandatory Appendix R should continue to be submitted as alternatives in accordance with 10 CFR 50.55a(a)(3). The NRC has not generically approved RI-ISI application because the code-approved guidance to date has not addressed inspection strategy for existing augmented and other inspection programs such as intergranular stress corrosion cracking (IGSCC), flow assisted corrosion (FAC), microbiological corrosion (MIC), and pitting or provided system-level guidelines for change in risk evaluation to ensure that the risk from individual system failures will be kept small and dominant risk contributors will not be created. Furthermore, allowing the use of Nonmandatory Appendix R without requiring submittal of an alternative would allow plants being licensed and constructed in accordance with 10 CFR part 52 to implement Nonmandatory Appendix R. The NRC believes at this time that the use of Nonmandatory Appendix R at plants licensed under 10 CFR part 52 plants is something that requires additional review of plant specific applications. For these reasons the NRC disagrees with the comment. No change was made to the final rule as a result of the comment.

10 CFR 50.55a(b)(3)(v) Subsection ISTD. Article IWF-5000, “Inservice Inspection Requirements for Snubbers”

Comment: 10 CFR 50.55a(b)(3)(v) should be revised as follows for clarification:

(v) Subsection ISTD. Article IWF-5000, “Inservice Inspection Requirements for Snubbers,” of the ASME B&PV Code, Section XI, must be used when performing inservice inspection examinations and tests of snubbers at nuclear plants, except as modified in (A) and (B) below. [11-27; 14-27a; 17-12; 19-1]

NRC Response: The NRC agrees that paragraph (b)(3)(v) should be clarified, and revised it to include references to paragraphs (b)(3)(v)(A) and (b)(3)(v)(B). The recommended change provides clarity between the selection of paragraph (b)(3)(v)(A) or (b)(3)(v)(B). The final rule is revised to add the suggested references.

10 CFR 50.55a(b)(3)(v)(A)

Comment: It is unclear whether the intent of paragraph (b)(3)(v) is that, after licensees have updated their programs to comply with the 2006 Addenda and later editions and addenda of the ASME B&PV Code and the equivalent endorsed edition and addenda of the ASME OM Code, Subsection ISTD, preservice and inservice examinations need not be performed using a VT-3 visual

examination method as described in IWA-2213. [14-27b; 17-13]

NRC Response: The NRC agrees with this comment to the extent that, as described in paragraph (b)(3)(v)(A), VT-3 visual examination must be used while using ASME OM Subsection ISTD in lieu of the requirements for snubbers in the editions and addenda up to the 2005 Addenda of the ASME Section XI, IWF-5200(a) and (b), and IWF-5300(a) and (b). Paragraph (b)(3)(v)(B) states that licensees using the 2006 Addenda and later editions of the ASME OM Code Subsection ISTD are not required to use VT-3 visual examination, because in the ASME OM Code snubber (pin-to-pin) visual examination VT-3 requirements have been replaced with the Owner's defined visual examination. However, removing VT-3 requirements for snubbers does not remove VT-3 requirements of support structure(s) and attachments as defined in IWF of ASME Section XI.

The proposed rulemaking would not change the intent of the current paragraph (b)(3)(v). The proposed rulemaking would split paragraph (b)(3)(v) into (b)(3)(v)(A) and (b)(3)(v)(B), because snubber inservice examination and testing requirements have been deleted in the 2006 addenda and later Editions of ASME Section XI. Up to, and including, the 2005 Addenda, both ASME Section XI and ASME OM Code contained snubber examination and testing requirements. Now, in the 2006 Addenda, the ASME OM Code is the only Code which contains the inservice examination and testing requirements of snubbers. The paragraph (b)(3)(v)(A) option is for licensees using ASME Section XI up to the 2005 Addenda, which is similar to the current paragraph (b)(3)(v). The paragraph (b)(3)(v)(B) option is for the licensees using the 2006 Addenda or the later edition of ASME Section XI, where the licensee will not find any snubber requirements in ASME Section XI; therefore, the ASME OM Code must be used.

The intent of current paragraph (b)(3)(v) is based on the ASME Section XI, IWF-5000 and ASME OM, Subsection ISTD requirements. The ASME Section XI up to the 2005 Addenda does not clearly distinguish the boundary between the support structure, attachments and the snubber. The inservice examination of the support structure and attachments is performed using VT-3 as required by Subsection IWF of Section XI, and IWF-5000 requires that snubber examination must be performed using VT-3 visual examination as described in IWA-2213. Subsection ISTD of the ASME OM Code

does not address inspection of the support structure and attachments. Therefore, to be consistent with the Section XI requirements, VT-3 visual examination is required when using Subsection ISTD of the OM Code in lieu of the IWF-5000 requirements of ASME Section XI, up to the 2005 Addenda. The proposed VT-3 requirement is consistent with the current requirement to ensure that an appropriate visual examination method was used for integral and non-integral snubber supports and attachments such as lugs, bolting, and clamps when using ISTD of the ASME OM Code in lieu of the ASME Section XI, 2005 Addenda.

In the 2006 Addenda and later edition of ASME Section XI, the inservice examination and testing requirements of snubbers have been deleted, and a Figure IWF-1300-1(f) has been added to clarify the boundary of a snubber (pin-to-pin) and its support structure and attachments. Figure IWF-1300-1(f) defines that a snubber (pin-to-pin) examination is excluded from Section XI, and the support structure and attachments, *etc.* are still under the scope of ASME Section XI. ASME Section XI, IWF-1220 in the 2006 Addenda and later edition states that inservice examination and testing of snubbers are outside the Scope of IWF, and can be found in the ASME OM Code. Subsection IWF requires that the inservice examination of support structure and attachments are to be performed using VT-3 visual examination, whereas the ASME OM Code requires that snubber (pin-to-pin) visual examination is to be performed using the Owner's qualified procedures and methods. However, if licensees prefer, the VT-3 visual examination method still can be used for snubber (pin-to-pin) inservice examination, while using ASME OM Code requirements. No change was made to the final rule as a result of this comment.

10 CFR 50.55a(b)(3)(v)(B)

Comment: The examination boundary for a snubber examination as defined in ISTD is the snubber unit out to the pins that hold it in place. Commenters request that the NRC clarify in the final rule whether the pin-to-pin ISTD examination of the snubber unit should be a VT-3, even though a VT-3 examination is a Section XI requirement. [14-27c; 17-13]

NRC Response: The NRC clarifies that the licensees are required to meet the snubber (pin-to-pin) visual examination requirements as specified in the Subsection ISTD of the ASME OM Code when using the 2006 Addenda and later

editions and addenda of Section XI of the ASME B&PV Code, as defined in paragraph (b)(3)(v)(B). Subsection ISTD of the ASME OM Code, 2006 Addenda and later editions requires that snubber (pin-to-pin) visual examination is to be performed using the Owner's qualified procedures and methods, whereas licensees must use VT-3 for integral and non-integral structure and attachments as required by ASME Section XI. However, licensees may use VT-3 visual examination method for snubber (pin-to-pin) inservice examination, while using ASME OM Code, 2006 Addenda and later editions.

When using the 2005 Addenda or earlier editions and addenda of the ASME OM Code, Subsection ISTD in lieu of the ASME Section XI, IWF-5000 as defined in paragraph (b)(3)(v)(A), licensees must use VT-3 visual examination for snubbers (pin-to-pin) and integral and non-integral structure and attachments as required by ASME Section XI.

Inservice Testing

10 CFR 50.55a(f)(5)(iv)

Comment: The words "and is not included in the revised inservice test program as permitted by paragraph (f)(4) of this section" seem to imply that a licensee need not seek relief if the inservice test program is revised to identify the impractical test requirement. If this is the intent of these words, licensees may not need to submit relief requests for IST Program impracticality if the IST Program is updated. If this is not the intent of these words, then the phrase "and is not included in the revised inservice test program as permitted by paragraph (f)(4) of this section" should be removed from paragraph (f)(5)(iv). [4-22]

NRC Response: The NRC does not agree with the comment. The proposed amendment states that where a pump or valve test requirement by the code or addenda is determined to be impractical by the licensee and is not included in the revised inservice test program, the basis for this determination must be submitted for NRC review and approval not later than 12 months after the expiration of the initial 120-month interval of operation. Therefore, a licensee has to submit relief requests for inservice testing (IST) Program impracticality if the IST Program is updated. No change was made to the final rule as a result of this comment.

Inservice Inspection

10 CFR 50.55a(g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i) and (g)(4)(ii)

Comment: The introductory text and other applicable sections should state that licensees use the provisions for examination and testing of snubbers in Subsection ISTD of the ASME OM Code or the requirements in plant Technical Specifications (TS). [1–1; 17–6]

NRC Response: The NRC does not agree with the commenter to include the optional provision of TS requirements for inservice examination and testing of snubbers along with Subsection ISTD of the ASME OM Code.

Paragraph (g) establishes the ISI requirements that licensees must use when performing ISI of components (including supports). Additionally, paragraph (g)(4)(iv) states that ISI of components (including supports) may meet the requirements set forth in subsequent editions to the “Code of Record” and addenda that are incorporated by reference in 10 CFR 50.55a(b), subject to limitations and modifications listed in 10 CFR 50.55a(b) and subject to NRC approval.

The requirements at 10 CFR 50.55a do not define any documents beyond “Code of Record” to control the snubber inservice examination and testing program. Licensees have the option to control the ASME Code-required ISI and testing of snubbers through their TS or other licensee-controlled documents (e.g. technical requirements manual, etc.). For facilities using their TS to govern ISI and testing of snubbers, paragraph (g)(5)(ii) requires that if a revised ISI program for a facility conflicts with the TS, the licensee shall apply to the NRC for amendment of the TS to conform the TS to the revised program. Therefore, the regulation does not state the type of documents to be used by the licensees to meet the snubber inservice examination and testing requirements as specified in the ASME Code, but TS must meet the “Code of Record” requirements. For a particular facility, the snubber inservice examination and testing may be controlled by its TS, including the applicable snubber inservice examination and testing requirements as specified in the ASME Code. No change was made to the final rule as a result of this comment.

10 CFR 50.55a(g)(5)(iii) and (g)(5)(iv)

Comment: The proposed rule adds extra burden on licensees to submit relief requests within 12 months of examinations where code requirements were determined to be impractical and the proposed rule language would put

paragraph (g)(5)(iii) in conflict with paragraph (g)(5)(iv). [2–3; 4–25; 11–31a–g; 14–31; 17–7; 17–10; 18–1; 20–14; 21–1; 22–1]

NRC Response: The NRC agrees with the comments that paragraph (g)(5)(iii) would place an extra burden on the licensee by requiring that requests for relief made in accordance with paragraph (g)(5)(iii) must be submitted to the NRC no later than 12 months after the examination has been attempted. This requirement could increase the number of submittals licensees need to submit for code requirements determined to be impractical. Rather than submitting one request for relief at the end of the interval for all requirements determined to be impractical throughout the 10-year interval as currently allowed, licensees would be required to prepare a submittal within 12 months of every examination that determined a requirement was impractical. This could result in the licensee preparing numerous submittals for relief requests where under the current rules only one submittal is required at the end of the interval. This requirement is revised in this final rule to align with paragraph (g)(5)(iv) to require submittal of these requests no later than 12 months after the expiration of the initial or subsequent 120-month inspection interval for which relief is sought.

Comment: Paragraph (g)(5) in general, and this proposed change to paragraph (g)(5)(iii) in particular, could also have a direct impact on examinations associated with welds and weld repairs performed during the course of a repair/replacement activity. Based on the proposed change to paragraph (g)(5)(iii), it could be argued that a relief request does not have to be submitted until after performance of a weld repair and alternative NDE or NDE with limited coverage. If the intent is to exclude NDE associated with welds and weld repairs (i.e., repair/replacement activities), then the proposed change to paragraph (g)(5)(iii) should be revised to make this clarification. [17–8; 17–14; 18–2]

NRC Response: If a licensee proposes to use a different inspection technique (e.g., UT vs. RT), an alternative must be submitted under the provisions of 10 CFR 50.55a(a)(3), regardless of what amount of coverage they would achieve with either technique. If the licensee has knowledge of the fact that the inspection using the different inspection technique will be limited, it is the NRC’s expectation that such information will be included as an integral part of the requested alternative. The alternative that would be approved would be based on the technique and

the amount of coverage the licensee expects to achieve. If the requested alternative is approved and the licensee achieves less coverage using the alternative inspection technique than that stipulated in the original alternative request, the licensee would need to submit a request for relief based on 10 CFR 50.55a(g)(5). No change was made to the final rule as a result of this comment.

Comment: The requirement to submit the relief request after the examination has been attempted may in fact be a clarification of the NRC’s intent, but the requirement to submit the relief request within 12 months of the attempt is certainly not a clarification, it is a new requirement. [2–3]

NRC Response: The NRC agrees that submitting the relief request within 12 months of the attempted examination would be a new requirement, which was not the NRC’s intent. This paragraph is revised in this final rule to align with paragraph (g)(5)(iv).

Comment: The words “and is not included in the revised inservice inspection program as permitted by paragraph (g)(4) of this section” seem to imply that a licensee need not seek relief if the inservice inspection program is revised to identify the impractical requirement. If this is the intent of these words, licensees may not need to submit relief requests for ISI Program impracticality if the ISI Program is updated. If this is not the intent of these words, then the phrase “and is not included in the revised inservice inspection program as permitted by paragraph (g)(4) of this section” should be removed from 10 CFR 50.55a(g)(5)(iv). [4–26]

NRC Response: The NRC agrees the phrase, “and is not included in the revised inservice inspection program as permitted by paragraph (g)(4) of this section,” could cause confusion, because paragraph (g)(4) does not address the basis for the determination of an examination requirement’s impracticality. The submittal of the basis for determination of the impracticality of an examination requirement is required by (g)(5)(iii) and the timing of this submittal is discussed in (g)(5)(iv). Therefore, paragraph (g)(5)(iv) of the final rule is revised to remove the wording “and is not included in the revised inservice inspection program as permitted by paragraph (g)(4) of this section.”

10 CFR 50.55a(g)(6)(ii)(F)(1)

Comment: The final rule should incorporate by reference Code Case N–770–1, approved by ASME on Dec. 25, 2009, in lieu of Code Case N–770. In

Code Case N-770-1, "cladding" was changed to "onlay" to eliminate confusion and misapplication in either installation requirements or examination/evaluation requirements, or both. The confusion and misapplication could result from someone applying the existing Code rules for "cladding," which is not the intent when "cladding mitigation" in N-770 is used. [4-4; 4-27a; 11-3; 11a-34a; 14-3; 14-34a; 19-1]

NRC Response: The NRC agrees that incorporating by reference Code Case N-770-1 into the final rule could eliminate a number of the proposed conditions. Many of the conditions the NRC proposed to impose on the use of Code Case N-770 have been incorporated into Code Case N-770-1, as discussed in specific comments related to Code Case N-770. Therefore, the final rule incorporates by reference Code Case N-770-1, and does not include most of the conditions on the use of Code Case N-770 that were included in the proposed rule. The NRC agrees that the term "cladding," as used by Section XI, does not apply to mitigation in the context of Code Case N-770. "Onlay" is the terminology used in the code case. The incorporation of Code Case N-770-1 in the final rule addresses the commenters' recommendation that the final rule use the terminology "onlay" instead of "cladding."

10 CFR 50.55a(g)(6)(ii)(F)(2)

Comment: The NRC has typically approved the application of pressure boundary weld mitigation techniques on a case-by-case basis. All mitigation techniques discussed in Code Case N-770, with the exception of Mechanical Stress Improvement Process (MSIP), are the subject of separate code cases which will be subject to approval by the NRC. MSIP meets the requirements of Appendix I of Code Case N-770 and has been separately approved by the NRC. If approved mitigation techniques are employed, a separate review of the reclassification of the welds as proposed by the condition in paragraph (g)(6)(ii)(F)(2) should not be required. [5-2; 8-1; 11a-34b; 14-34b; 16-1; 17-16; 18-4; 19-1; 20-16; 21-8]

NRC Response: The NRC disagrees that a separate NRC review of the reclassification of welds should not be required for mitigation techniques approved in ASME code cases. It is the NRC's position that a separate review of the reclassification of welds will be required unless NRC-approved mitigation techniques are employed. This condition provides clarity for the licensee and inspectors for the

classification of each weld. Under the condition, unless there is NRC approval of a mitigation technique, whether generic or plant specific, such welds will be classified as category items A-1, A-2 or B of Table 1 of ASME Code Case N-770-1. All mitigation techniques discussed in Code Case N-770, with the exception of MSIP, are covered by separate code cases in various stages of development. These code cases are subject to approval by the NRC. As ASME completes these mitigation code cases, the NRC will review and approve them, if appropriate, possibly with conditions. The NRC uses RG 1.147, which is incorporated by reference in 10 CFR 50.55a, to endorse approved code cases for generic use. Based on the wording of paragraph (g)(6)(ii)(F)(2), as the NRC endorses mitigation code cases in the RG, the rule permits licensees to categorize mitigated welds in the corresponding Inspection Items in Code Case N-770-1, without a separate NRC review of the classification or reclassification. No change to paragraph (g)(6)(ii)(F)(2) was made in the final rule as a result of this comment.

Comment: The proposed condition in paragraph (g)(6)(ii)(F)(2) is not consistent with the other proposed conditions in paragraphs (g)(6)(ii)(F)(6) and (g)(6)(ii)(F)(7) or Code Case N-770. Paragraph (g)(6)(ii)(F)(6) requires that a weld that has been mitigated by inlay or corrosion resistant cladding, and then is found to be cracked, be reclassified and inspected using the frequencies of Inspection Item A-1, A-2, or B. This indicates that an uncracked weld that has been mitigated by inlay or corrosion resistant cladding would not be categorized as Inspection Items A-1, A-2 or B following an acceptable pre-service examination. Additionally, paragraph (g)(6)(ii)(F)(7) requires that a weld mitigated by inlay or corrosion resistant cladding be examined each interval if at hot-leg temperatures and as part of a 25-percent sample plan on a 20-year frequency if at cold-leg temperatures, which is not consistent with Inspection Item A-1, A-2, or B. [5-2; 8-1; 11a-34b; 14-34b; 16-1; 17-16; 18-4; 19-1; 20-16; 21-8]

NRC Response: The NRC agrees with the first point about the inconsistency between paragraphs (g)(6)(ii)(F)(2) and (g)(6)(ii)(F)(6), but disagrees with the second point about an inconsistency between paragraphs (g)(6)(ii)(F)(2) and (g)(6)(ii)(F)(7). Proposed paragraph (g)(6)(ii)(F)(6) referred to welds mitigated by inlay or cladding rather than referring to welds in Inspection Items G, H, J, and K. The wording in proposed paragraph (g)(6)(ii)(F)(6)

overlooked the step required by paragraph (g)(6)(ii)(F)(2) to obtain NRC authorization for an alternative classification of welds as Inspection Items G, H, J, or K. However, paragraph (g)(6)(ii)(F)(6) of the proposed rule is not included in the final rule because Code Case N-770-1 addresses the NRC's concern that was contained in this condition, and Code Case N-770-1 is incorporated by reference in the final rule.

The NRC disagrees with the commenters' second point. Paragraph (g)(6)(ii)(F)(7) in the proposed rule correctly referred to, and would apply to, welds in Inspection Items G, H, J and K. Before welds can be categorized as Inspection Items G, H, J, or K, the categorization would first have to be authorized by the NRC under the condition in paragraph (g)(6)(ii)(F)(2). Therefore, paragraph (g)(6)(ii)(F)(7) in the proposed rule would be consistent with paragraph (g)(6)(ii)(F)(2). No change to paragraph (g)(6)(ii)(F)(7) of the proposed rule was made in the final rule as a result of this comment.

10 CFR 50.55a(g)(6)(ii)(F)(3)

Comment: The proposed condition in paragraph (g)(6)(ii)(F)(3) should not be applied. The final rule approval timing for some plants may be such that there would not be time to plan and prepare for the required baseline inspection under the proposed condition in paragraph (g)(6)(ii)(F)(3) and prepare repair contingencies, (e.g., approval of the rule in June and the next refueling outage for a plant is in September). By providing a window of the next two refueling outages, the required planning and preparation can be accommodated.

Additionally, for baseline examinations already completed to the requirements of the industry guidance, any condition applied should recognize these examinations as acceptable for compliance to N-770 and the NRC Conditions. [5-3; 8-2; 11a-34c; 14-34c; 16-2; 17-17; 18-5; 19-1; 20-17; 21-9]

NRC Response: The NRC agrees that more time may be needed after the rule becomes effective for licensees to complete the baseline examinations, but does not agree that the condition should not be included in the final rule. The NRC believes that there are welds within the scope of Code Case N-770 that have not been examined under the industry program MRP-139, "Primary System Piping Butt Weld Inspection and Evaluation Guideline." There may also be welds that received less than complete ASME Code, Section XI, examination coverage under the MRP-139 program. Paragraph (g)(6)(ii)(F)(3) is necessary to ensure that adequate

baseline examinations have been performed on all welds within the scope of Code Case N-770, since these welds are susceptible to PWSCC. The need for ensuring the integrity of these welds, beginning with baseline examinations, has been recognized by the NRC and industry groups for a number of years. The NRC included paragraph (g)(6)(ii)(F)(3) in the proposed rule because it believes that the code case requirement allowing two refueling outages after adoption of the code case to complete the baseline examinations is inconsistent with the safety significance of performing the initial inspections of these welds.

The NRC recognizes that the timing in paragraph (g)(6)(ii)(F)(3) as proposed would, in some cases, constrain planning and preparation efforts for the required baseline examination. Therefore, for butt welds that were not in the scope of MRP-139 and did not receive a baseline examination, the timing in paragraph (g)(6)(ii)(F)(3) in the final rule is extended to require that these baseline examinations be completed at the next refueling outage that occurs more than 6 months from the effective date of the final rule. This change in the condition would give licensees at least 6 months to plan and prepare for the baseline examination. If a baseline examination cannot be performed by the licensee to meet the requirements of paragraph (g)(6)(ii)(F), then the licensee is required to obtain NRC authorization of alternative examination requirements in accordance with paragraphs (a)(3)(i) or (a)(3)(ii).

In response to the comment regarding using examinations performed prior to issuance of the final rule as baseline examinations for Code Case N-770, the NRC revised paragraph (g)(6)(ii)(F)(3) in the final rule to address this option. Previous examinations of these welds can be credited for baseline examinations if they were performed using Section XI, Appendix VIII requirements and met the Code-required examination volume for axial and circumferential flaws of essentially 100 percent. For butt welds that received a MRP-139 examination that did not fully meet Section XI, Appendix VIII requirements, or achieve essentially 100-percent coverage, licensees can re-perform the baseline examination to meet these requirements or obtain NRC authorization of alternative examination requirements in accordance with paragraph (a)(3)(i) or (a)(3)(ii) by the end of next refueling outage that occurs after 6 months from the effective date of the final rule. This provision acknowledges previous examinations that could satisfy

the Code Case N-770-1 baseline requirement, with NRC authorization of alternative examination requirements within a reasonable time frame.

A licensee may also choose to use previous inspections of dissimilar-metal butt welds performed under the plant's ASME Code, Section XI, Inservice Inspection program to count as meeting the paragraph (g)(6)(ii)(F)(3) baseline requirement. This is acceptable, provided the previous inspection falls within the re-inspection period for welds in ASME Code Case N-770-1, Table 1, Inspection Items A-1, A-2, and B. Additionally, the NRC-approved alternative examination coverage for these welds during the current 10-year inservice inspection interval remain applicable. In all of these cases, the previously-approved alternative will continue to apply for the duration authorized by the NRC as the final rule does not revoke previous NRC-approved alternatives or relief requests.

In the final rule, paragraph (g)(6)(ii)(F)(3) is revised to require baseline examinations for welds in Table 1, Inspection Items A-1, A-2, and B, to be performed at the next refueling outage that occurs later than 6 months after the effective date of the final rule. The rule allows previous examinations of these welds to be credited for baseline examinations if they were performed (1) within the re-inspection period for the weld item in Table 1, and (2) using Section XI, Appendix VIII requirements and met the Code-required examination volume of essentially 100 percent. The rule allows other previous examinations that do not meet these requirements to be used to meet the baseline examination requirement, provided NRC authorization of alternative inspection requirements in accordance with 10 CFR 50.55a(a)(3)(i) or (a)(3)(ii) is granted prior to the end of the next refueling outage that occurs later than 6 months after the effective date of the final rule.

10 CFR 50.55a(g)(6)(ii)(F)(5)

Comment: In Code Case N-770-1, approved by the ASME on December 25, 2009, Paragraph—3132.3(b) has been modified, so the adoption of Code Case N-770-1 would make the proposed condition in paragraph (g)(6)(ii)(F)(5) no longer necessary. [5-5; 8-4; 11-34e; 14-34e; 16-4; 19-1; 20-19; 21-11]

NRC Response: The NRC agrees with this comment for several reasons. Code Case N-770, Paragraph —3132.3(b) states that a “flaw is not considered to have grown if the size difference (from a previous examination) is within the measurement accuracy of the NDE technique employed.” Use of this

terminology may have resulted in a departure from the past practice when applying the ASME Code, Section XI. Paragraph (g)(6)(ii)(F)(5) of the proposed rule stated that a flaw is not considered to have grown if a previously evaluated flaw has remained essentially unchanged. This wording is consistent with the requirements and practice of NDE under Section XI. Paragraph—3132.3(b) of Code Case N-770-1 uses the same wording as contained in paragraph (g)(6)(ii)(F)(5) of the proposed rule. The revised requirement of Code Case N-770-1 fully addresses the NRC's concern contained in paragraph (g)(6)(ii)(F)(5) of the proposed rule. Because the final rule incorporates by reference Code Case N-770-1, the final rule does not include the condition of paragraph (g)(6)(ii)(F)(5) from the proposed rule.

10 CFR 50.55a(g)(6)(ii)(F)(6)

Comment: Code Case N-770-1, approved by the ASME on Dec. 25, 2009, modified Note 16(c), so the adoption of Code Case N-770-1 would make the proposed condition in 10 CFR 50.55a(g)(6)(ii)(F)(6) no longer necessary. [5-6; 8-5; 11a-34f; 14-34f; 16-5; 19-1; 20-20; 21-12]

NRC Response: The NRC agrees with this comment for several reasons. Code Case N-770 would permit welds mitigated by inlay or cladding (*i.e.*, onlay) in Inspection Items G, H, J, and K, to remain in those Inspection Items if cracking were to occur that penetrates through the thickness of the inlay or onlay. The purpose of an inlay or onlay is to provide a corrosion-resistant barrier between reactor coolant and the underlying Alloy 82/182 weld material that is susceptible to PWSCC. If cracking penetrates through the thickness of an inlay or onlay, the inspection frequencies of Inspection Items G, H, J, and K would no longer be appropriate even after satisfying the successive examination requirements of Paragraph—2420. Paragraph (g)(6)(ii)(F)(6) would require welds in Inspection Items G, H, J, or K, with cracking that penetrates beyond the thickness of the inlay or cladding, be reclassified as Inspection Item A-1, A-2, or B, as appropriate, until corrected by repair/replacement activity in accordance with IWA-4000 or by corrective measures beyond the scope of Code Case N-770. A new sentence added to Note (16)(c) of Code Case N-770-1 states that “if cracking penetrates beyond the thickness of the inlay or onlay, the weld shall be reclassified as Inspection Item A-1, A-2, or B, as appropriate, until corrected by repair/replacement activity in accordance with

IWA-4000 or by corrective measures beyond the scope of this Case (e.g., stress improvement).” The revision of Note (16)(c) in Code Case N-770-1 fully addresses the NRC concerns contained in paragraph (g)(6)(ii)(F)(6) of the proposed rule. Because the final rule incorporates by reference Code Case N-770-1, the final rule does not include the condition of paragraph (g)(6)(ii)(F)(6) from the proposed rule.

10 CFR 50.55a(g)(6)(ii)(F)(7)

Comment: The proposed condition is appropriate because the Appendix VIII supplement has not yet been developed to demonstrate the detection of flaws in the thin inlay or cladding when the examination is performed from the outside surface. Code Case N-770-1, approved by the ASME on Dec. 25, 2009, modified the “Extent and Frequency of Examination” column for Inspection Items G, H, J, and K in Table 1, so adoption of Code Case N-770-1 would allow the NRC to modify the proposed condition in paragraph (g)(6)(ii)(F)(7). [5-7; 8-6; 11a-34g; 14-34g; 16-6; 19-1; 20-21; 21-13]

NRC Response: The NRC agrees with this comment. In Code Case N-770, the Table 1 column titled “Extent and Frequency of Examination” for Inspection Items G, H, J, and K (welds mitigated by inlay or cladding) only requires a surface examination for welds in Inspection Items G, H, J, and K if a volumetric examination is performed from the weld inside-diameter surface. The NRC proposed adding paragraph (g)(6)(ii)(F)(7) on welds in Inspection Items G, H, J, and K, which would have required that the ISI surface examination requirements of Table 1 apply whether the inservice volumetric examinations are performed from the weld outside diameter or the weld inside diameter. A volumetric examination performed from the weld outside-diameter surface would not be capable of detecting flaws in an inlay or onlay. In Code Case N-770-1, the Table 1 column titled “Extent and Frequency of Examination” for Inspection Items G, H, J, and K contains revised requirements to perform a surface examination from the weld inside surface and a volumetric examination performed from either the inside or outside surface. The revised requirement of Code Case N-770-1 for surface examination of welds in Inspection Items G, H, J, and K is the same requirement that was contained in paragraph (g)(6)(ii)(F)(7) of the proposed rule. Because the final rule incorporates by reference Code Case N-770-1, the final rule does not include the surface

examination requirement of paragraph (g)(6)(ii)(F)(7) from the proposed rule.

10 CFR 50.55a(g)(6)(ii)(F)(8)

Comment: Code Case N-770-1, approved by the ASME on Dec. 25, 2009, modified Notes 11(b)(1) and (2), so adoption of Code Case N-770-1 would make the proposed condition in paragraph (g)(6)(ii)(F)(8) no longer necessary. [5-9; 8-8; 11a-34h; 16-8; 19-1; 20-23; 21-15]

NRC Response: The NRC agrees with this comment for several reasons. Inspection Items D, G, and H pertain to mitigation of uncracked butt welds by stress improvement, weld inlay, and weld onlay, respectively. Code Case N-770 does not explicitly preclude deferral of the first examination of Items D, G, and H following mitigation to the end of the interval. Therefore, the NRC proposed paragraph (g)(6)(ii)(F)(8) to ensure that the initial examinations of welds in Inspection Items D, G, and H take place on an appropriate schedule to verify the effectiveness of the mitigation process. Note (11), which pertains to deferral of the first examinations after mitigation, was revised in Code Case N-770-1. The revised requirements of Code Case N-770-1, Note (11), indicate that the first examinations following mitigation are to be performed within 10 years following mitigation for Item D butt welds, but can be performed any time within the 10 years. The revised requirements of Code Case N-770-1, Note (11), indicate that the first examinations following mitigation are to be performed as specified in Table 1 for Items G and H butt welds. The revised requirements of Code Case N-770-1 preclude deferral of the first examinations of Item D butt welds beyond the 10 years allowed by Table 1, and preclude deferral of the first examinations for Item G and H butt welds to the end of an interval, if that is later than the specified time in Table 1. The revision of Note (11) in Code Case N-770-1 addresses the NRC’s concerns in paragraph (g)(6)(ii)(F)(8) of the proposed rule. Because the final rule incorporates by reference Code Case N-770-1, the final rule does not include the condition of paragraph (g)(6)(ii)(F)(8) from the proposed rule.

10 CFR 50.55a(g)(6)(ii)(F)(9)

Comment: Code Case N-770-1, approved by the ASME on Dec. 25, 2009, modified paragraph I-1.1, so adoption of Code Case N-770-1 would make the proposed condition in paragraph (g)(6)(ii)(F)(9) no longer necessary. [5-10; 8-9; 11-34i; 14-34i; 16-9; 19-1; 20-24; 21-16]

NRC Response: The NRC agrees with this comment for several reasons. Code Case N-770, Appendix I, Measurement or Quantification Criteria I-1.1, requires an analysis that assumes the pre-stress-improvement, residual-stress condition resulting from a construction weld repair from the inside diameter to a depth of 50-percent of the weld thickness. Code Case N-770 does not specify the circumferential extent of the weld repair that must be assumed. Paragraph (g)(6)(ii)(F)(9) of the proposed rule would require that in applying Measurement or Quantification Criterion I-1.1, the weld repair be assumed to extend 360° around the weld. Code Case N-770-1 specifies in Measurement or Quantification Criterion I-1.1 that the weld repair be assumed to extend 360° around the weld. The addition of the circumferential extent of the assumed weld repair in Appendix I of Code Case N-770-1 fully addresses the NRC’s concern contained in paragraph (g)(6)(ii)(F)(9) of the proposed rule. Because the final rule incorporates by reference Code Case N-770-1, the final rule does not include the condition of paragraph (g)(6)(ii)(F)(9) from the proposed rule.

10 CFR 50.55a(g)(6)(ii)(F)(10)

Comment: Code Case N-770-1, approved by the ASME on Dec. 25, 2009, modified paragraph I-2.1, so adoption of Code Case N-770-1 in lieu of N-770 in the final rule would allow the NRC to remove this condition. [5-11; 8-10; 11-34j; 14-34j; 16-10; 19-1; 20-25; 21-17]

NRC Response: The NRC agrees with this comment for several reasons. Code Case N-770, Appendix I, Measurement or Quantification Criterion I-2.1, requires that an analysis or demonstration test account for load combinations that could cause plastic ratcheting. This wording is inappropriate since this criterion pertains to the permanence of a mitigation process by stress improvement, and “shakedown” rather than “ratcheting” is the phenomenon that could lead to lack of permanence of the mitigation. Paragraph (g)(6)(ii)(F)(10) of the proposed rule would require that the last sentence of Measurement or Quantification Criterion I-2.1 be replaced with a sentence that uses the correct terminology. Code Case N-770-1 of Appendix I, Measurement or Quantification Criterion I-2.1, requires that an analysis or demonstration test account for load combinations that could relieve stress due to shakedown. The revised requirement of Code Case N-770-1 fully addresses the NRC’s

concern contained in paragraph (g)(6)(ii)(F)(10) of the proposed rule. Because the final rule incorporates by reference Code Case N-770-1, the final rule does not include the condition of paragraph (g)(6)(ii)(F)(10) from the proposed rule.

10 CFR 50.55a(g)(6)(ii)(F)(11)

Comment: The NRC proposes to add a condition to require that in applying Measurement or Quantification Criterion I-7.1 of Appendix I, an analysis be performed using IWB-3600 evaluation methods and acceptance criteria to verify that the mitigation process will not cause any existing flaws to grow. However, measurement or Quantification Criterion I-7.1 permits the growth of existing flaws in welds mitigated by stress improvement recognizing that flaw growth can also be caused by fatigue crack growth, which cannot be precluded. Criterion I-7.1, however, also includes the requirement that the mitigation process will not cause any existing flaws to become unacceptable.

Code Case N-770-1 modified paragraph 1-7.1, so adoption of Code Case N-770-1 would allow the NRC to remove proposed condition 10 CFR 50.55a(g)(6)(ii)(F)(11). [5-12; 8-11; 11a-34k; 14-34k; 16-11; 19-1; 20-26; 21-18]

NRC Response: The NRC agrees with this comment for several reasons. Code Case N-770, Appendix I, Performance Criteria I-7, requires that the stress intensity factor at the depth of the flaw (the flaw tip) be determined using combined residual and operating stresses, and shall be zero. Under paragraph I-7, no flaw growth could occur if the stress intensity factor is zero at the flaw tip using the combined residual and operating stresses. The following section of the code case, Measurement or Quantification Criteria I-7.1, requires that an analysis be performed to verify that the mitigation process will not cause any existing flaws to become unacceptable. The NRC proposed adding paragraph (g)(6)(ii)(F)(11), because it appeared that, contrary to the requirements of I-7, the analysis required by the Mitigation or Quantification Criteria may have allowed flaw growth, even growth by primary-water stress corrosion cracking.

The revised requirements of Code Case N-770-1, Appendix I, Performance Criteria I-7, state that the stress intensity factor at the depth of the flaw shall be determined using combined residual and steady-state operating stresses, and shall not be greater than zero. By adding the words "steady-state" in I-7 of Code Case N-770-1, and

maintaining the stress intensity factor at the flaw tip to zero or less, primary-water stress corrosion cracking would not be expected to occur. The next section of the Code Case N-770-1, Measurement or Quantification Criteria I-7.1, requires that an analysis be performed, using IWB-3600 evaluation methods and acceptance criteria, to verify that the mitigation process will not result in any existing flaws becoming unacceptable. The revised wording in I-7 and I-7.1 would only allow flaw growth under non-steady-state operating stresses (fatigue) and would ensure that standard ASME Code analysis methods are used to limit any fatigue growth to acceptable levels. Code Case N-770-1, Appendix I, uses different wording than proposed in paragraph (g)(6)(ii)(F)(11). However, the revised requirements in Code Case N-770-1 fully address the NRC's concern that the criteria of Code Case N-770, Appendix I, were contradictory and may have permitted flaw growth by PWSCC. Because the final rule incorporates by reference Code Case N-770-1, the final rule does not include the condition of paragraph (g)(6)(ii)(F)(11) from the proposed rule.

10 CFR 50.55a(g)(6)(ii)(F)(13)

Comment: Code Case N-770-1 modified the wording of the Extent and Frequency of Examination for Inspection Items C and F, so adoption of Code Case N-770-1 would allow removal of the proposed condition in 10 CFR 50.55a(g)(6)(ii)(F)(13). [5-14; 8-13; 11-34m; 14-34m; 16-13; 19-1; 20-28; 21-19]

NRC Response: The NRC agrees with this comment. Inspection Items C and F pertain to butt welds mitigated by full structural weld overlays. Note (10) of Code Case N-770 requires that welds in Inspection Items C and F that are not included in the 25-percent sample be examined prior to the end of the mitigation evaluation period if the plant is to be operated beyond that time. Proposed paragraph (g)(6)(ii)(F)(13) was written because Code Case N-770 does not contain a similar requirement to inspect prior to the end of the mitigation evaluation period for welds that are included in the 25-percent sample. Code Case N-770-1, Table 1, requires that for welds in the Inspection Items C and F 25-percent inspection sample that have a design life of less than 10 years, at least one inservice inspection shall be performed prior to exceeding the life of the overlay. The revised requirements in Code Case N-770-1 fully address the NRC concern that Inspection Item C and F welds in the 25-percent inspection sample may not have been inspected

prior to the end of the life of the overlay. Because the final rule incorporates by reference Code Case N-770-1, the final rule does not include the condition of paragraph (g)(6)(ii)(F)(13) from the proposed rule.

10 CFR 50.55a(g)(6)(ii)(F)(14)

Comment: The change in the dimension to be used in determining the thickness "t" in the acceptance criteria should be adopted, but the NRC-proposed condition should not be adopted, for the following reason.

The proposed condition in paragraph (g)(6)(ii)(F)(14) would cause a conflict in the definition of the required examination volume A-B-C-D, with Figures 2(a) and 5(a) showing the correct definition of the required volume and Figures 2(b) and 5(b) combined with the NRC's proposed condition defining a larger and unintended examination volume (by extending the examination volume of an overlay in both axial directions).

Code Case N-770-1 removed the 1/2-inch (13 mm) dimension shown in Figures 2(b) and 5(b) of Code Case N-770 and replaced them with dimensions "X" and "Y". The notes beneath each figure define dimensions "X" and "Y".

Concurrent with the change in the 1/2-inch dimension, Code Case N-770-1 also removed the examination volume A-B-C-D from Figures 2(b) and 5(b). This change was made to clarify that Figures 2(b) and 5(b) were not defining any examination volume, but were only defining the thicknesses to use in applying IWB-3514 acceptance standards. The thickness "t2" in Figures 2(b) and 5(b) was also revised/corrected in Code Case N-770-1 to reflect the total thickness of the original pipe plus the overlay at the location of the flaw.

The adoption of Code Case N-770-1 in lieu of N-770 in the final rule would allow the NRC to remove the proposed condition in paragraph (g)(6)(ii)(F)(14). If Code Case N-770-1 is not adopted in the final rule, the proposed NRC condition needs to be revised to either require the use of Figures 2(b) and 5(b) in Code Case N-770-1, or provide specific figures to use with the condition that are identical to Figures 2(b) and 5(b) in Case N-770-1. [11a-34n]

NRC Response: The NRC agrees with this comment for several reasons. Code Case N-770, Figures 2(b) and 5(b), contain information on component thicknesses to be used in application of the acceptance standards of ASME Code, Section XI, IWB-3514, to evaluate flaws detected during preservice and inservice inspection of weld overlays. The 1/2-inch (13 mm) dimensions shown

in Figures 2(b) and 5(b) could have resulted in a non-conservative application of the acceptance standards. The appropriate dimensions are a function of the nominal thickness of the nozzle and pipe being overlaid rather than a single, specified value (1/2-inch) on either side of the weld for all pipes and nozzles. The revision in Code Case N-770-1 of the 1/2-inch dimension in Figures 2(b) and 5(b) to be used in determining the thickness "t" in the acceptance standards is consistent with paragraph (g)(6)(ii)(F)(14) of the proposed rule. Concurrent with the change in the 1/2 inch dimension, Code Case N-770-1 also removed the examination volume A-B-C-D from Figures 2(b) and 5(b). This change was made to clarify that Figures 2(b) and 5(b) were not defining an examination volume, but were defining the thicknesses to use in applying IWB-3514 acceptance standards, that is, the locations in the weld overlay where each of the two thicknesses, "t1" and "t2", would apply to flaws. The thickness "t2" in Figures 2(b) and 5(b) was also corrected in Code Case N-770-1 to reflect the total thickness of the original pipe plus the overlay at the location of the flaw. The changes to Figures 2(b) and 5(b) that are reflected in Code Case N-770-1 address the NRC's concern regarding non-conservative application of acceptance standards during preservice inspection. The NRC agrees that the other changes made to Figures 2(b) and 5(b) in Code Case N-770-1 correct errors in these figures in Code Case N-770. Because the final rule incorporates by reference Code Case N-770-1, the final rule does not include the condition of paragraph (g)(6)(ii)(F)(14) from the proposed rule.

10 CFR 50.55a(g)(6)(ii)(F)(15)

Comment: The condition as proposed will not accomplish what was intended. As proposed, for a flaw in the original nozzle/weld material we would have to use "t" equal to the inlay/onlay thickness to determine the acceptable size per IWB-3514. Nothing would be acceptable under that condition. For flaws that are not contained within the inlay/onlay/cladding, the value of "t" used should be the full structural wall thickness. If the NRC feels that there still needs to be a condition specified in this area, it needs to be re-structured to specify appropriate "t" values for flaws that are contained within the inlay/onlay, and t values for flaws that are contained in the original structural material. [11a-34o; 14-34o; 17-20; 18-9; 19-1]

NRC Response: The NRC agrees that the condition in paragraph

(g)(6)(ii)(F)(15) of the proposed rule would be more effective if it were revised as recommended. The condition in paragraph (g)(6)(ii)(F)(15) of the proposed rule dealt with the value of "t" to use for flaws found in an inlay or onlay. Although a value of "t" equal to the full structural wall thickness is inferred by the code case, the condition did not address the value of "t" to be used for flaws that are not contained within the inlay or onlay material. In the final rule this condition has been revised to clarify that for Inspection Items G, H, J, and K, when applying the acceptance standards of ASME B&PV Code, Section XI, IWB-3514, for planar flaws that are not contained within the inlay or onlay material, the thickness "t" in IWB-3514 is the combined thickness of the inlay or onlay and the dissimilar metal weld.

III. Discussion of NRC Approval of New Edition and Addenda to the Codes, ASME Code Cases N-722-1 and N-770-1, and Other Changes to 10 CFR 50.55a

The NRC is amending its regulations to incorporate by reference the 2005 Addenda through 2008 Addenda of Section III, Division 1, and Section XI, Division 1 of the ASME B&PV Code; and the 2005 Addenda and 2006 Addenda of the ASME OM Code into 10 CFR 50.55a. The NRC also is incorporating by reference Code Case N-770-1, and revision 1 to Code Case N-722, which was incorporated by reference into the NRC's regulations on September 10, 2008 (73 FR 52729).

The NRC follows a three-step process to determine acceptability of new provisions in new editions and addenda to the Codes, and the need for conditions on the uses of these Codes. This process was employed in the review of the Codes that are the subjects of this rule. First, NRC staff actively participates with other ASME committee members with full involvement in discussions and technical debates in the development of new and revised Codes. This includes a technical justification in support of each new or revised Code. Second, the NRC committee representatives discuss the Codes and technical justifications with other cognizant NRC staff to ensure an adequate technical review. Finally, the NRC position on each Code is reviewed and approved by NRC management as part of the rule amending 10 CFR 50.55a to incorporate by reference new editions and addenda of the ASME Codes, and conditions on their use. This regulatory process, when considered together with the ASME's own process for developing and approving ASME Codes, provides reasonable assurances that the NRC

approves for use only those new and revised Code edition and addenda (with conditions as necessary) that provide reasonable assurance of adequate protection to public health and safety and that do not have significant adverse impacts on the environment.

The NRC reviewed changes to the Codes in the editions and addenda of the Codes identified in this rulemaking. The NRC concluded, in accordance with the process for review of changes to the Codes, that each of the editions and addenda of the Codes, and the 1994 Edition of NQA-1, are technically adequate, consistent with current NRC regulations, and approved for use with the specified conditions.

The following paragraphs contain the NRC's evaluation of the changes to the Code editions and addenda (including new Code provisions) and Code Cases N-722-1 and N-770-1, where the NRC added new, revised existing, or removed conditions in 10 CFR 50.55a.

Quality Standards, ASME Codes and Institute of Electrical and Electronics Engineers (IEEE) Standards, and Alternatives

10 CFR 50.55a(a)

The NRC is amending § 50.55a(a) to add a new paragraph heading entitled "Quality standards, ASME Codes and IEEE standards, and alternatives." This will be consistent with paragraph headings throughout 10 CFR 50.55a.

Applicant/Licensee-Proposed Alternatives to the Requirements of 10 CFR 50.55a

10 CFR 50.55a(a)(3)

The NRC is amending § 50.55a(a)(3) to clarify that an alternative must be submitted to, and authorized by, the NRC prior to implementing the alternative. Licensees have misinterpreted § 50.55a(a)(3) and erroneously concluded that it is permissible to obtain NRC authorization of an alternative after its implementation. The final rule requires that alternatives to the requirements of §§ 50.55a(c), (d), (e), (f), (g), and (h) must be submitted to, and authorized by, the NRC prior to implementing the alternatives.

Standards Approved for Incorporation by Reference

10 CFR 50.55a(b)

The NRC is amending § 50.55a(b) to add a new paragraph heading entitled "Standards approved for incorporation by reference." This will be consistent with paragraph headings throughout 10 CFR 50.55a.

The question has arisen many times in the past of whether Subsection NE, "Class MC Components;" Subsection NF, "Supports;" Subsection NG, "Core Support Structures;" and Appendices of the ASME B&PV Code, Section III, are NRC requirements. The NRC is clarifying in this section how the regulations in 10 CFR 50.55a apply to these Section III subsections and appendices. This discussion sets forth the NRC's views regarding the applicable NRC requirements, clarifies which portions of Section III are approved for use by applicants and licensees, identifies which portions of Section III are NRC requirements, and identifies which portions of Section III are not covered by the regulations in 10 CFR 50.55a. The requirements of Subsection NH, "Class 1 Components in Elevated Temperature Service," of Section III are already addressed in § 50.55a(b)(1)(vi), and the bases for these requirements have been discussed in the final rule (69 FR 58804) issued on October 1, 2004, that amended 10 CFR 50.55a to incorporate by reference the 2001 Edition up to and including the 2003 Addenda of the ASME Code, Section III.

First, it should be noted that in 10 CFR 50.55a, the NRC mandates the use of Section III, Division 1, rules for ASME Code Class 1, 2, and 3 components in 10 CFR 50.55a(c), (d) and (e), respectively. Specifically, 10 CFR 50.55a(c), (d) and (e) state that for applicants constructing a nuclear power plant, those components which are part of the reactor coolant pressure boundary must meet the requirements for Class 1 components in Section III (*e.g.*, Subsection NB, "Class 1 Components"); components classified as Quality Group B must meet the requirements for Class 2 components (*e.g.*, Subsection NC, "Class 2 Components"); and components classified as Quality Group C must meet the requirements for Class 3 components (*e.g.*, Subsection ND, "Class 3 Components"). The NRC considers the rules of Subsection NCA and Section III mandatory appendices to be mandated as well, but only as they apply to Class 1, 2, and 3 components because the language in 10 CFR 50.55a(c), (d) and (e) also covers general requirements in Subsection NCA and mandatory appendices in Section III that are applicable to Class 1, 2, and 3 components.

In addition, the introductory text of 10 CFR 50.55a(b) states, in part, that the ASME Code, Section III, is approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. However, the regulatory language does

not identify specific subsections in Section III that are incorporated by reference, and one can only assume that all of Section III (including all subsections, appendices and Division 2 and 3 rules) are incorporated by reference. Although it is clear that Subsections NB, NC and ND are regulatory requirements because they are mandated by 10 CFR 50.55a(c), (d) and (e) as discussed in this document, the lack of specific rule language in 10 CFR 50.55a mandating the use of Subsections NE, NF, NG, and the Section III mandatory (roman numeral) appendices has created confusion about the regulatory requirements applicable to Subsections NE, NF, and NG, and the Section III mandatory appendices. Subsection NE provides rules for constructing metal containment components (Class MC). Subsection NF provides rules for constructing supports for Class 1, 2, 3, and MC components. Subsection NG provides rules for constructing reactor core support structures. The Section III mandatory appendices are used in conjunction with the aforementioned subsections. In this sense, "constructing" is an all-inclusive term that comprises the design, fabrication, installation, examination, testing, inspection and selection of materials for nuclear power plant components.

The NRC is, therefore, clarifying that when Subsections NE, NF, NG, and the Section III mandatory appendices are incorporated by reference, but not mandated, these subsections are not NRC requirements. Rather, the NRC considers Subsections NE, NF, NG and the Section III mandatory appendices to be approved by the NRC for use by applicants and licensees of nuclear power plants by virtue of the NRC's overall approval of Section III, Division 1 rules without condition. In this manner, approval of the rules in Subsections NE, NF, NG, and the Section III mandatory appendices is similar to regulatory guidance provided in NRC RGs in that it provides an acceptable method for meeting NRC requirements and, in this particular case, in 10 CFR part 50, Appendix A, General Design Criterion (GDC) 1, "Quality standards and records." Applicants and licensees may propose means other than those specified by the provisions in Subsections NE, NF, NG, and the Section III mandatory appendices for meeting the applicable regulation. It should be noted that the NRC reviews an applicant's proposed means of meeting the requirements of GDC 1 as part of its review of an application for each manufacturing

license, standard design approval, standard design certification and combined license under 10 CFR part 52 and for each construction permit and operating license under 10 CFR part 50 using the guidelines of NRC NUREG-0800, "Standard Review Plan [SRP] for the Review of Safety Analysis Reports for Nuclear Power Plants—LWR Edition," and applicable regulatory guides. During its review of new reactor designs under 10 CFR part 52, the NRC is reviewing the criteria and extent of compliance of standard plant designs and combined licenses with the rules of the specific edition and addenda to Subsections NE, NF, NG, and the associated Section III mandatory appendices for applicability to these new reactor designs. The process being used by the NRC in the review of Subsections NE, NF, NG, and the Section III mandatory appendices for new reactors as described in this document is essentially the same process used by the NRC for the licensing of all nuclear power plants since the SRP was first issued in 1975. Therefore, this clarification does not establish new positions or requirements in the regulatory application of Subsections NE, NF, NG, and the Section III mandatory appendices to the construction of nuclear power plants.

Because the NRC staff participates on the ASME Code committees in the development of any revisions to Subsections NE, NF, NG, and the Section III mandatory appendices, the NRC is cognizant of the acceptability of the Code rules applicable to Subsections NE, NF, NG and the Section III mandatory appendices. NRC's use of consensus technical standards meets the requirements of Public Law 104-113, National Technology Transfer and Advancement Act of 1995. Additional discussion on NRC's compliance with the NTTAA is set forth in Section VII, "Voluntary Consensus Standards," of this document.

Consistent with this discussion, the NRC did not substantially change the language in the introductory text to 10 CFR 50.55a(b). The NRC is modifying the regulatory language in the introductory text of 10 CFR 50.55a(b) to clarify that non-mandatory appendices are excluded from Section III rules that are incorporated by reference because the NRC does not review the acceptability of non-mandatory Section III appendices. Similarly, the NRC is clarifying in the introductory text of 10 CFR 50.55a(b) that only Division 1 rules of Section III and Section XI are incorporated by reference (*i.e.*, Divisions 2 and 3 rules are not incorporated by reference). The NRC also is

incorporating by reference ASME Code Case N-722-1, "Additional Examinations for PWR Pressure Retaining Welds in Class 1 Components Fabricated With Alloy 600/82/182 Materials Section XI, Division 1," and Code Case N-770-1, "Alternative Examination Requirements and Acceptance Standards for Class 1 PWR Piping and Vessel Nozzle Butt Welds Fabricated with UNS N06082 or UNS W86182 Weld Filler Material with or without Application of Listed Mitigation Activities."

ASME B&PV Code, Section III

Introductory Text to 10 CFR 50.55a(b)(1)

The NRC is amending the introductory text of § 50.55a(b)(1) to clarify that references to Section III refer to Section III of the ASME Boiler and Pressure Vessel Code.

10 CFR 50.55a(b)(1)(ii) Weld-Leg Dimensions

The NRC is amending § 50.55a(b)(1)(ii) in order to apply the conditions currently in § 50.55a(b)(1)(ii) to the latest Edition and Addenda incorporated by reference in this rulemaking. The current regulations in § 50.55a(b)(1)(ii) outline the conditions on the use of stress indices used for welds in piping design under Subarticles NB-3600, NC-3600, and ND-3600 of the ASME B&PV Code. The current regulations are based on the NRC's concern about the undersized weld-leg dimension of less than $1.09t_n$, which results in a weld which is weaker than the pipe to which it is adjoined. The reasons for the current condition in 10 CFR 50.55a(b)(1)(ii) are articulated in a previous NRC rulemaking (64 FR 51370; September 22, 1999).

In the proposed rule, the NRC proposed a revision to the condition identified in § 50.55a(b)(1)(ii) to address the NRC concerns with the undersized welds ($C_x=0.75 t_n$), which are not acceptable because the current ASME Code design rules would result in a circumferential, fillet-welded or socket-welded joint where the weld size is smaller than the adjoining pipe wall thickness, which makes the weld weaker than the pipe. The proposed rule also included an editorial addition of a condition on the use of paragraph NB-3683.4(c)(2). The proposed rule indicated that the use of paragraph NB-3683.4(c)(1) is currently not allowed and would continue to be prohibited in the proposed rulemaking. The addition of the condition on the use of paragraph NB-3683.4(c)(2) is purely editorial in nature since, by imposing a condition on the use of NB-3683.4(c)(1), the

regulations would inherently impose a condition on the use of NB-3683.4(c)(2) given their use within Section III of the ASME B&PV Code. Therefore, this condition in the proposed rule was not new from a technical standpoint. Also, an editorial correction was proposed regarding Footnote 11, which should be Footnote 13 for the 2004 Edition through the 2008 Addenda in Figure NC-3673.2(b)-1 and Figure ND-3673.2(b)-1.

For licensees and applicants using the 1989 Addenda through the latest edition and addenda of Section III of the ASME B&PV Code incorporated by reference in § 50.55a(b)(1), the final rule prohibits applicants and licensees from applying the following ASME Code provisions: subparagraphs NB-3683.4(c)(1) and NB-3683.4(c)(2) and Footnote 11 from the 1989 Addenda through the 2003 Addenda, or Footnote 13 from the 2004 Edition through the 2008 Addenda, to Figures NC-3673.2(b)-1 and ND-3673.2(b)-1. The final rule requires applicants and licensees to adhere to these prohibitions when considering welds with leg size less than $1.09t_n$.

The NRC received a number of public comments regarding the proposed modification to § 50.55a(b)(1)(ii), all of which disagreed with the proposed rule language. The disagreements were based on the assertion that the proposed rule language was not referencing the correct ASME B&PV Code provisions on weld sizes. However, the NRC disagreed with these public comments due to the fact that the language in the proposed rule was merely a modification to a current condition in the existing regulations and none of the public comments received on the proposed modification to § 50.55a(b)(1)(ii) present any new arguments or information that would cause the NRC to revisit its determination described in the previous rulemaking. As previously stated, the reasons for the current condition in 10 CFR 50.55a(b)(1)(ii) are articulated in a previous NRC rulemaking (64 FR 51370; September 22, 1999). Therefore, no change was made to paragraph § 50.55a(b)(1)(ii) of the final rule as a result of these comments. The complete bases for making no modifications to the proposed rule are found in the public comment response document.

10 CFR 50.55a(b)(1)(iii) Seismic Design of Piping

The NRC is amending § 50.55a(b)(1)(iii) to explicitly prohibit the use of Subarticles NB-3200, NB-3600, NC-3600 and ND-3600 from the 1994 Addenda through the 2005 Addenda of Section III of the ASME B&PV Code for the seismic design of

piping. However, the amendment to § 50.55a(b)(1)(iii) does permit the use of Subarticle NB-3200 from the 2004 Edition through the 2008 Addenda of the ASME Code for the seismic design of piping, subject to the new condition identified as § 50.55a(b)(1)(iii)(A). The amendment to § 50.55a(b)(1)(iii) also permits the use of Subarticles NB-3600, NC-3600 and ND-3600 from the 2006 Addenda through the 2008 Addenda of Section III of the ASME B&PV Code for the seismic design of piping, subject to a new condition identified as § 50.55a(b)(1)(iii)(B).

The current requirements regarding piping seismic rules in Section III of the ASME B&PV Code were first introduced in the 1994 Addenda to the ASME B&PV Code. These rules were subsequently modified in the 2001 Edition and 2002 Addenda to the ASME B&PV Code. The current regulations in § 50.55a(b)(1)(iii) only allow the use of Subarticles NB-3200, NB-3600, NC-3600, and ND-3600 from the 1993 Addenda and earlier editions and addenda of the ASME B&PV Code, Section III for the seismic design of piping.

As noted, the amendment to § 50.55a(b)(1)(iii) includes the addition of a new condition identified as § 50.55a(b)(1)(iii)(A). The condition in § 50.55a(b)(1)(iii)(A) resolves an issue identified by the NRC regarding the inclusion of reversing dynamic loads when calculating the primary bending stresses for Level B service limits. Also, the amendment to § 50.55a(b)(1)(iii) includes the addition of a new condition identified as § 50.55a(b)(1)(iii)(B). The condition in § 50.55a(b)(1)(iii)(B) relates to the use of the D_o/t ratio and material requirements of NB-3656(b) when applying the 2006 Addenda through the 2008 Addenda of Section III of the ASME B&PV Code to the seismic design of piping.

In the proposed rule, the NRC proposed an amendment to § 50.55a(b)(1)(iii) which would have allowed the use of the latest edition and addenda of Section III of the ASME B&PV Code, incorporated by reference in this rulemaking, subject to three new conditions identified as § 50.55a(b)(1)(iii)(A), (b)(1)(iii)(B), and (b)(1)(iii)(C). These additional requirements would have provided three conditions on the use of the latest edition and addenda of Section III of the ASME B&PV Code incorporated by reference in the current rulemaking, as they apply to the seismic design of piping. As a result of public comments received, the final rule retains only two of the original three conditions with respect to the use of the editions and

addenda of Section III of the ASME B&PV Code incorporated by reference in § 50.55a(b)(1) for the seismic design of piping.

In the proposed rule, the NRC proposed an additional paragraph identified as § 50.55a(b)(1)(iii)(A) which addressed the NRC's position regarding the B_2' indices in paragraph NB-3656 of Section III of the ASME B&PV Code. This condition would have stipulated that the value of B_2' should be no less than $0.75B_2$ (from Table NB-3681(A)-1) when applying the 2006 Addenda through the 2008 Addenda of Section III of the ASME B&PV Code for the seismic design of piping. The NRC proposed this condition to address the possibility that ferritic steels may exhibit lower margins and a decrease in toughness at higher temperatures due to dynamic strain aging.

A number of public comments were received regarding the proposed condition on the B_2' indices, all of which cited ASME Position Paper STP-NU-008, issued on November 6, 2009, as the bases for eliminating the proposed condition. This position paper presents information demonstrating that dynamic strain aging at typical seismic strain rates is insignificant and that adequate margin exists between the ASME Section III code criteria and the ultimate moment under dynamic cyclic loading ("adequate margin" refers to the margin recommended in Appendix III of NUREG/CR-5361). The NRC agreed with the comments, and considers the previous concerns regarding the possible reduction in margin due to dynamic strain aging effectively resolved based on the information found in the aforementioned ASME position paper. Therefore, as a result of public comments received, the final rule does not include this condition.

Additionally, as a result of the deletion of this condition from the final rule, the paragraphs which were identified as § 50.55a(b)(1)(iii)(B) and § 50.55a(b)(1)(iii)(C) in the proposed rule are identified as § 50.55a(b)(1)(iii)(A) and § 50.55a(b)(1)(iii)(B) in the final rule. A more comprehensive discussion regarding the bases for this change can be found in the public comment response document.

In the proposed rule, the NRC proposed an additional paragraph identified as § 50.55a(b)(1)(iii)(B) which addressed the NRC's position regarding Note (1) of Figure NB-3222-1 of Section III of the ASME B&PV Code. The NRC proposed this condition based on the premise that while the inclusion of reversing dynamic loads in the calculation of primary bending stresses

for Level B service limits may not be warranted when the Operating Basis Earthquake is not included in the design basis for the facility, at other times these loads must be considered. Such is the case when a licensee's Operating Basis Earthquake level is more than one-third the value of the Safe Shutdown Earthquake. However, the current wording of Note (1) in Figure NB-3222-1 of Section III of the ASME B&PV Code does not account for this situation.

Multiple public comments were received regarding this proposed condition and most generally concurred with the proposed language. However, all of the public comments received indicated that additional specificity should be provided in the condition by adding the words, "by NB-3223(b)" immediately after the word, "required" in the proposed wording for § 50.55a(b)(1)(iii)(B). The NRC agreed with the public commenters based on the fact that the suggestion within the comment results in a more direct application of the proposed condition in that there is no ambiguity as to how the condition applies with respect to the seismic design of piping. The final rule includes additional information regarding the applicability of this condition by noting the specific subparagraph (NB-3223(b)) for which this condition applies when the 2006 Addenda through the 2008 Addenda of Section III of the ASME B&PV Code are used for the seismic design of piping as a result of public comments received regarding this condition. Additionally, as a result of public comments, the final rule regarding this condition is identified as § 50.55a(b)(1)(iii)(A). The complete bases for this change can be found in the public comment response document.

In the proposed rule, the NRC proposed an additional paragraph identified as § 50.55a(b)(1)(iii)(C) which addressed the NRC's position regarding the limitation on the D_o/t ratio of ASME Class 1, 2 and 3 piping when applying Subarticles NB-3600, NC-3600 and ND-3600 in the 2006 Addenda through the 2008 Addenda of Section III of the ASME B&PV Code. This proposed addition would have placed a condition on the D_o/t ratio by requiring this value to be no greater than 40 when applying Subarticles NB-3600, NC-3600, or ND-3600 in the 2006 Addenda through the 2008 Addenda of Section III of the ASME B&PV Code for the seismic design of piping.

The public comment responses received regarding this proposed condition all indicated that the condition which the NRC was proposing already existed within the code, except

for one anomaly. Specifically, the comments noted that the limitation on the D_o/t ratio is already contained in NB-3656(b), NC/ND-3653.1(b), NC/ND-3655(b), and, by reference to the Level D requirements, NB-3655.2(b) and NC/ND-3654.2(b). However, the comments also noted that the D_o/t ratio limitation is not inherent or explicit for Level B service limits in Class 1 piping. As such, all of the comments suggested that the focus of the proposed condition be narrowed to capture the condition where it is not already included within the ASME Code provisions. The NRC agreed with these comments.

The final rule includes a provision for the seismic design of Class 1 piping which requires the material and D_o/t requirements of NB-3656(b) to be met for all Service Limits when the Service Limits include reversing dynamic loads, and the alternative rules for reversing dynamic loads are used as a result of the public comments received on this condition. Additionally, as a result of public comments, the final rule regarding the condition on the D_o/t requirements is identified as § 50.55a(b)(1)(iii)(B). The complete bases for this change can be found in the public comment response document.

10 CFR 50.55a(b)(1)(iv) Quality Assurance

The NRC is amending § 50.55a(b)(1)(iv) to be consistent with a revised quality assurance provision in the 2006 Addenda of the ASME B&PV Code, Section III, Subsection NCA. The final rule allows the use of 1994 Edition of NQA-1, "Quality Assurance Requirements for Nuclear Facility Applications," when using the 2006 Addenda of Section III of the ASME B&PV Code and later editions and addenda. The reference to ASME NQA-1 in Article 4000 of the ASME B&PV Code, Section III was updated to a later edition of NQA-1 in the 2006 Addenda. NCA-4110(b) was revised to require that the N-Type Certificate Holders comply with the Basic Requirements and Supplements of the ASME NQA-1-1994 Edition. Previous editions/addenda of the ASME B&PV Code, Section III referenced earlier editions and addenda of ASME NQA-1. There are no significant differences between of NQA-1-1994 Edition and the editions and addenda of NQA-1 currently referenced in the regulation. The NRC has reviewed and found the changes to Subsection NCA that reference the 1994 Edition of NQA-1 to be acceptable.

10 CFR 50.55a(b)(1)(vii) Capacity Certification and Demonstration of Function of Incompressible-Fluid Pressure-Relief Valves

The NRC is amending § 50.55a(b)(1) to add a new paragraph (b)(1)(vii) to modify the requirements in Subsection NB of the ASME B&PV Code, Section III, for certifying the capacity of incompressible-fluid, pressure-relief valves when the testing facility has less than the full range of pressure capability necessary for achieving valve set-pressure conditions during the testing. The NRC has identified no issues with performing tests at less than the highest value of the set-pressure range for incompressible-fluid, pressure-relief valves and finds these new requirements for Class 2 and 3 components acceptable as described in paragraphs NC-7742 and ND-7742. However, the NRC has identified words that were inadvertently left out of the Code during the final printing of paragraph NB-7742 for Class 1 components. The parallel structure of the counterpart paragraphs (NC-7742 and ND-7742) reveal that the words “for the design and the maximum set pressure” are missing from paragraph NB-7742(a)(2). Without these words, paragraph NB-7742(a)(2) is confusing, illogical, and could lead to a non-conservative interpretation of the required test pressure for the new Class 1 incompressible-fluid, pressure-relief valve designs. For these reasons, the final rule includes a condition in paragraph (b)(1)(vii) allowing use of paragraph NB-7742 when the corrected language intended by the Code is used.

ASME B&PV Code, Section XI

The regulations in § 50.55a(b)(2) incorporate by reference ASME B&PV Code, Section XI, 1970 Edition through the 1976 Winter Addenda; and the 1977 Edition (Division 1) through the 2004 Addenda (Division 1), subject to the conditions identified in § 50.55a(b)(2)(i) through (b)(2)(xxvii). The NRC is amending the introductory text to § 50.55a(b)(2) to incorporate by reference the 2005 Addenda (Division 1) through the 2008 Addenda (Division 1) of the ASME B&PV Code, Section XI, clarify the wording, and remove or revise some of the conditions as explained in this document.

The question has arisen in the past of whether Appendices of the ASME B&PV Code, Section XI, are NRC requirements. The NRC is clarifying in this section how the regulations in 10 CFR 50.55a apply to the Section XI subsections and appendices. This discussion sets forth the NRC's views regarding the

applicable NRC requirements, clarifies which portions of Section XI are approved for use by applicants and licensees, identifies which portions of Section XI are NRC requirements, and identifies which portions of Section XI are not covered by the regulations in 10 CFR 50.55a.

First, it should be noted that in 10 CFR 50.55a, the NRC mandates in 10 CFR 50.55a(g)(4) that throughout the service life of a boiling or pressurized water-cooled nuclear power facility, components (including supports) which are classified Class 1, 2, 3, MC and CC meet the requirements of Section XI (with some exceptions). Specifically, within Section XI, Subsection IWB provides the requirements for Class 1 components, Subsection IWC provides the requirements for Class 2 components, Subsection IWD provides the requirements for Class 3 components, Subsection IWE provides the requirements for Class MC components, and Subsection IWL provides the requirements for Class CC components. The NRC considers the rules of Subsection IWA and Section XI Mandatory Appendices to be mandated as well, because the language in IWA and the Mandatory Appendices covers general requirements that could apply to the inservice inspection of Class 1, 2, 3, MC and CC components.

The NRC is clarifying that the Section XI non-mandatory appendices which are incorporated by reference into 10 CFR 50.55a are approved for use, but are not mandated. The non-mandatory appendices may be used by applicants and licensees of nuclear power plants (subject to the conditions in 10 CFR 50.55a(b)(2)).

Introductory Text of 10 CFR 50.55a(b)(2)

The NRC is amending the introductory text of § 50.55a(b)(2) to clarify that references to Section XI refer to Section XI of the ASME Boiler and Pressure Vessel Code.

10 CFR 50.55a(b)(2)(i) Limitations on Specific Editions and Addenda

The NRC is amending § 50.55a(b)(2) to remove § 50.55a(b)(2)(i) from the regulations and is designating that paragraph as “Reserved.” This paragraph specified which addenda may be used when applying the 1974 and 1977 Editions of Section XI of the ASME B&PV Code. Section 50.55a(g)(4)(ii) requires that licensees' successive 120-month inspection intervals comply with the requirements of the latest edition and addenda of the code incorporated by reference in § 50.55a(b)(2). Subsequently, licensees are no longer using these older editions (1974 and

1977 Editions) and addenda of the ASME B&PV Code, and therefore the NRC removed this paragraph.

10 CFR 50.55a(b)(2)(iii) Steam Generator Tubing

The NRC is amending § 50.55a(b)(2) to remove § 50.55a(b)(2)(iii) from the regulations and is designating that paragraph as “Reserved.” The current regulations in § 50.55a(b)(2)(iii) state that if the technical specifications of a nuclear power plant include surveillance requirements for steam generators different than those in Section XI, Article IWB-2000, the ISI program of steam generator tubing is governed by the requirements in the technical specifications. The 1989 Edition through the 2008 Addenda of Section XI IWB-2413, “Inspection Program for Steam Generator Tubing,” state that “the examinations shall be governed by the plant Technical Specification.” Because the condition in § 50.55a(b)(2)(iii) is redundant to the 1989 Edition through the 2008 Addenda of Section XI, the NRC is removing this condition.

10 CFR 50.55a(b)(2)(iv) Pressure-Retaining Welds in ASME Code Class 2 Piping

The NRC is amending § 50.55a(b)(2) to remove § 50.55a(b)(2)(iv) from the regulations and is designating that paragraph as “Reserved.” This paragraph states how to select appropriate Code Class 2 pipe welds in residual heat removal systems, emergency core cooling systems, and containment heat removal systems when applying editions and addenda up to the 1983 Edition through the Summer 1983 Addenda of Section XI of the ASME B&PV Code. Section 50.55a(g)(4)(ii) requires that licensee's successive 120-month inspection intervals comply with the requirements of the latest edition and addenda of the code incorporated by reference in § 50.55a(b)(2). Subsequently, licensees are no longer using these older editions and addenda of the code (editions and addenda up to the 1983 Edition through the Summer 1983 Addenda of Section XI) and, therefore, the NRC is removing § 50.55a(b)(2)(iv).

10 CFR 50.55a(b)(2)(v) Evaluation Procedure and Acceptance Criteria for Austenitic Piping

The NRC is amending § 50.55a(b)(2) to remove § 50.55a(b)(2)(v) from the regulations and is designating that paragraph as “Reserved.” This paragraph deals with evaluation procedures and acceptance criteria for austenitic piping when applying the

Winter 1983 Addenda and the Winter 1984 Addenda of Section XI. Section 50.55a(g)(4)(ii) requires that licensees' successive 120-month inspection intervals comply with the requirements of the latest edition and addenda of the code incorporated by reference in § 50.55a(b)(2). Subsequently, licensees are no longer using these older editions and addenda of the code (editions and addenda up to the 1983 Edition through the Summer 1983 Addenda of Section XI), and therefore, the NRC is removing § 50.55a(b)(2)(v).

10 CFR 50.55a(b)(2)(vi) Effective Edition and Addenda of Subsection IWE and Subsection IWL, Section XI

The NRC is amending § 50.55a(b)(2)(vi) to stipulate the editions and addenda of Subsection IWE and Subsection IWL of Section XI of the ASME B&PV Code which are approved for use when licensees are implementing the initial 120-month inspection interval for containment inservice inspection requirements found in Section XI of the Code. The final rule also requires that the use of these applicable editions and addenda is subject to the conditions found in § 50.55a(b)(2)(viii) and (b)(2)(ix) for Subsection IWL and Subsection IWE, respectively. Additionally, the NRC is amending § 50.55a(b)(2)(vi) to change the words "modified and supplemented" to "conditioned" for clarification.

10 CFR 50.55a(b)(2)(viii) Examination of Concrete Containments

This paragraph stipulates the conditions that apply to the inservice examination of concrete containments using Subsection IWL of various editions and addenda of the ASME B&PV Code, Section XI, incorporated by reference in § 50.55a(b)(2). The regulations, in part, require that licensees applying Subsection IWL, 2001 Edition through the 2004 Edition shall apply the conditions in § 50.55a(b)(2)(viii)(E) through (b)(2)(viii)(G). The NRC is amending § 50.55a(b)(2)(viii) to remove the conditions in § 50.55a(b)(2)(viii)(F) and (b)(2)(viii)(G) in the final rule when applying Subsection IWL of the 2007 Edition with 2008 Addenda of the ASME B&PV Code, Section XI because the intent of these conditions has been incorporated into the 2007 Edition with the 2008 Addenda of the ASME B&PV Code, as explained in this document. Accordingly, the final rule requires that licensees applying Subsection IWL, 2007 Edition with the 2008 Addenda shall apply only the condition in § 50.55a(b)(2)(viii)(E). Further, in the

final rule, the conditions in § 50.55a(b)(2)(viii)(E) through (b)(2)(viii)(G) remain applicable to licensees applying Subsection IWL, 2004 Edition through the 2006 Addenda.

The condition in § 50.55a(b)(2)(viii)(F) relates to qualification of personnel that examine containment concrete surfaces and tendon hardware, wires, or strands. This condition states that personnel that examine containment concrete surfaces and tendon hardware, wires, or strands must meet the qualification provisions in IWA-2300, and that the "owner-defined" personnel qualification provisions in IWL-2310(d) are not approved for use. IWA-2300 stipulates qualification provisions for personnel performing nondestructive examination, including VT-1, VT-2, and VT-3 visual examinations. Paragraph IWA-2312(c) requires training, qualification, and certification of visual examination personnel to comply with the requirements of Appendix VI of the Code, which makes reference to ANSI/ASNT CP-189, and allows for limited certification (for personnel who are restricted to performing examinations of limited or specific scope, *i.e.*, limited operations or limited techniques) per IWA-2350.

In Subsection IWL of the 2007 Edition, the ASME revised paragraph IWL-2100 to state, in part, that except as noted in IWL-2320, the requirements of IWA-2300 do not apply. Also, the 2007 Edition deleted subparagraphs IWL-2310(d) and IWL-2310(e), which allowed certain requirements (*i.e.*, requirements for personnel qualification and requirements for visual examination of concrete and tendon anchorage hardware, wires, or strands) to be owner-defined. Further, the 2007 Edition with 2008 Addenda added a new paragraph IWL-2320 "Personnel Qualifications" and re-designated the former IWL-2320 "Responsible Engineer" as IWL-2330 "Responsible Engineer."

The new paragraph IWL-2320 stipulates specific plant experience, training, written and practical examination and frequency of administration to demonstrate training proficiency, and vision test requirements for qualification of personnel approved by the Responsible Engineer for performing general or detailed visual examinations of structural concrete, reinforcing steel and post-tensioning system components (*i.e.*, wires, strands, anchorage hardware, corrosion protection medium and free water) of Class CC containments. The provision requires documentation of qualification

requirements in the Employer's written practice. The Responsible Engineer is responsible for approval, instruction and training of personnel performing general and detailed visual examinations. The new provision also provided the requisite detailed requirements for the instruction material to be used to qualify personnel performing IWL inspections. Specifically, the addition included requirements for preservice and inservice inspections for concrete (references American Concrete Institute 201.1R), reinforcing steel, and post-tensioning items such as wires, strands, anchorage hardware, corrosion protection medium, and free water. Thus, the qualification requirements adequately include the areas and extent of required plant experience, instructional topics for class room training in IWL requirements and plant-specific IWL visual examination procedures, and require the vision test requirements of IWA-2321. The new paragraph IWL-2320, "Personnel Qualifications," details specific guidance for personnel qualification for containment concrete and reinforcing steel and post-tensioning system visual inspections that provide an acceptable level of quality and safety similar to the requirements in IWA-2300 and therefore, addressed the intent of the conditions in § 50.55a(b)(2)(viii)(F) of the current regulations. Therefore, the condition in § 50.55a(b)(2)(viii)(F) is not required to be applied for licensees using Subsection IWL, 2007 Edition with the 2008 Addenda. It is noted that the NRC's acceptance of the new code provision IWL-2320, "Personnel Qualifications," is based on paragraph IWL-2320 of the 2007 Edition as supplemented by the addition by errata in the 2008 addenda.

The condition in § 50.55a(b)(2)(viii)(G) of the final rule requires that corrosion protection material be restored following concrete containment post-tensioning system repair and replacement activities in accordance with the quality assurance program requirements specified in IWA-1400." In the 2007 Edition of Subsection IWL, the following revisions were made related to corrosion protection medium for post-tensioning systems:

1. The revised paragraph IWL-4110 added footnote 1 which states that the corrosion protection medium is exempt from the requirements of IWL-4000. However, the corrosion protection medium must be restored in accordance with IWL-2526 following concrete containment post-tensioning system repair/replacement activities.

2. The revised Line Item L2.40 "Corrosion Protection Medium" of Table IWL-2500-1 added reference to paragraph IWL-2526 in the columns for Test or Examination Requirement, Test or Examination Method, and Extent of Examination.

3. In the revised paragraph IWL-2526, subparagraph (b) requires that following the completion of tests and examinations required by Examination Category L-B, Items L2.10, L2.20, and L2.30, the corrosion protection medium must be replaced to ensure sufficient coverage of anchorage hardware, wires, and strands. The total amount replaced in each tendon sheath must be recorded and differences between amount removed and amount replaced must be documented.

4. In the revised paragraph IWL-2526, subparagraph (d) requires that the Responsible Engineer specify the method for corrosion protection medium.

With the understanding that the Responsible Engineer (who per IWL-2320 is a Registered Professional Engineer) will ensure that the corrosion protection medium is restored in accordance with the applicable Quality Assurance Program, the revised paragraphs IWL-4110(b)(3) [with footnote 1] and IWL-2526, and revised line item L2.40 in Table IWL-2500-1 of Subsection IWL, 2007 Edition through the 2008 Addenda adequately incorporated the intent of the condition in § 50.55a(b)(2)(viii)(G) of the current regulations and is acceptable to the NRC. Therefore, the condition in § 50.55a(b)(2)(viii)(G) is not required to be applied for licensees using Subsection IWL, 2007 Edition through the 2008 Addenda.

10 CFR 50.55a(b)(2)(ix) Examination of Metal Containments and the Liners of Concrete Containments

This paragraph stipulates the conditions that apply to the inservice examination of metal containments and liners of concrete containments using Subsection IWE of various editions and addenda of the ASME B&PV Code, Section XI, incorporated by reference in § 50.55a(b)(2). As a result of public comments, the NRC is amending § 50.55a(b)(2)(ix)(A) to divide the existing condition in § 50.55a(b)(2)(ix)(A) into paragraphs (b)(2)(ix)(A)(1) and (b)(2)(ix)(A)(2). The NRC is removing the conditions in § 50.55a(b)(2)(ix)(A)(1), (b)(2)(ix)(F), (b)(2)(ix)(G), (b)(2)(ix)(H) and (b)(2)(ix)(I) when applying the 2004 Edition with 2006 Addenda through the 2007 Edition with 2008 Addenda of the ASME Code, Section XI because these conditions

have now been incorporated into the Code. The NRC is also removing the condition in § 50.55a(b)(2)(ix)(I) when applying the 2004 Edition, up to and including, the 2005 Addenda. Furthermore, the NRC is also amending § 50.55a(b)(2)(ix) to add a new condition as § 50.55a(b)(2)(ix)(J) on the use of Article IWE-5000 of Subsection IWE when applying the 2007 Edition, up to and including the 2008 Addenda of the ASME Code, Section XI. These changes are further explained in this document.

The current regulations, in part, require that licensees applying Subsection IWE, 1998 Edition through the 2004 Edition apply the conditions in § 50.55a(b)(2)(ix)(A), (b)(2)(ix)(B), and (b)(2)(ix)(F) through (b)(2)(ix)(I). In the final rule, the conditions in § 50.55a(b)(2)(ix)(F) through (b)(2)(ix)(I) remain applicable to licensees applying Subsection IWL, 1998 Edition through the 2001 Edition with the 2003 Addenda. As a minor correction to the current regulations, the final rule requires that licensees applying Subsection IWE of the 2004 Edition through the 2005 Addenda of the ASME B&PV Code, satisfy the requirements of § 50.55a(b)(2)(ix)(A), (b)(2)(ix)(B), and (b)(2)(ix)(F) through (b)(2)(ix)(H). This correction is being made since paragraph IWE-3511.3 of the 2004 Edition of the ASME B&PV Code incorporated the condition in § 50.55a(b)(2)(ix)(I), which requires that the ultrasonic examination acceptance standard specified in IWE-3511.3 for Class MC pressure-retaining components must also be applied to metallic liners of Class CC pressure-retaining components. Further, the final rule requires that licensees applying Subsection IWE, 2004 Edition with the 2006 Addenda through the latest edition and addenda incorporated by reference in § 50.55a(b)(2) satisfy the requirements of § 50.55a(b)(2)(ix)(A) and (b)(2)(ix)(B). This is because the intent of the conditions in § 50.55a(b)(2)(ix)(F) through (b)(2)(ix)(H) were incorporated into Subsection IWE, 2004 Edition with the 2006 addenda, and the condition § 50.55a(b)(2)(ix)(I) was incorporated into Subsection IWE, 2004 Edition, as explained in this document.

The condition in § 50.55a(b)(2)(ix)(F) of the final rule requires that VT-1 and VT-3 examinations be conducted in accordance with IWA-2200. Personnel conducting examinations in accordance with the VT-1 or VT-3 examination method must be qualified in accordance with IWA-2300, and the "owner-defined" personnel qualification provisions in IWE-2330(a) for personnel that conduct VT-1 and VT-3 examinations are not approved for use.

This condition defines the code provision (IWA-2200) and personnel qualification (IWA-2300) requirements for personnel performing visual examinations by the VT-1 or VT-3 method, as specified in the conditions in § 50.55a(b)(2)(ix)(G) and (b)(2)(ix)(H) of the rule. The condition does not allow use of the "owner-defined" personnel qualification provisions in IWA-2330(a) for personnel that conduct VT-1 and VT-3 examinations. The revised code provision in IWE-2330(a) of the 2006 Addenda requires that personnel performing VT-1 and VT-3 visual examinations shall meet the qualification requirements of IWA-2300. The revised code provision in IWL-2100 of the 2006 Addenda states that IWA-2000 applies with the exception that IWA-2210 and IWA-2300 do not apply to general visual examination only (except as required by 2330(b) for vision test requirements). Therefore, the code provisions in IWA-2200 and IWA-2300 will apply to VT-1 and VT-3 examinations. Thus, the revised code provisions in IWE-2330(a) and IWE-2100 of the 2006 through 2008 Addenda fully incorporates the condition in § 50.55a(b)(2)(ix)(F). Therefore, the condition in § 50.55a(b)(2)(ix)(F) is not required to be applied for licensees using Subsection IWE, 2004 Edition with the 2006 Addenda and the 2007 Edition through the 2008 Addenda.

The condition in § 50.55a(b)(2)(ix)(G) of the final rule requires that the VT-3 examination method be used to conduct the examinations in Items E1.12 and E1.20 of Table IWE 2500-1, and the VT-1 examination method be used to conduct the examination in Item E4.11 of Table IWE-2500-1. An examination of the pressure-retaining bolted connections in Item E1.11 of Table IWE-2500-1 using the VT-3 examination method must be conducted once each interval. The "owner-defined" visual examination provisions in IWE-2310(a) are not approved for use for VT-1 and VT-3 examinations. This condition, applicable in the current regulations to the 1998 Edition through the 2004 Edition, requires that the VT-3 and VT-1 examination methods be used in lieu of the "General Visual" and "Detailed Visual" methods, respectively, as specified in Table IWE-2500-1 for the Item Numbers listed in the condition, and that the owner-defined visual examination provisions in IWE-2310(a) cannot be used for VT-1 and VT-3 examinations. In the 2006 Addenda through the 2008 Addenda, Table IWE-2500-1 was revised to change the examination method for Item

Numbers E1.12 and E1.20 to the VT-3 method and for Item E4.11 to the VT-1 method. Also, a new Examination Category E-G was added for pressure-retaining bolting with Item No. E8.10 which requires 100 percent of each bolted connection to be examined, using the VT-1 method and the acceptance standard in the newly added paragraph IWE-3530, once during each Inspection Interval with the connection assembled and bolting in-place, provided the connection is not disassembled during the interval, or in the disassembled configuration if the connection is disassembled for any reason during the interval. This VT-1 examination, which is more stringent than the VT-3 method specified in the condition, is in addition to the general visual examination of 100 percent of the pressure-retaining bolted connections during each inspection period required to be performed under Item No. E1.11 of Table IWE-2500-1. Further, the revised IWE-2310 does not have any owner-defined provisions for performing visual examinations including VT-1 and VT-3 examinations. Thus, the provisions in the revised Table IWE-2500-1 and the revised paragraph IWE-2310 addressed the intent of the condition in § 50.55a(b)(2)(ix)(G). Therefore, the condition in § 50.55a(b)(2)(ix)(G) is not required to be applied for licensees using Subsection IWE, 2004 Edition with the 2006 Addenda and the 2007 Edition through the 2008 Addenda.

The condition in § 50.55a(b)(2)(ix)(H) of the final rule requires that containment bolted connections that are disassembled during the scheduled performance of the examinations in Item E1.11 of Table IWE-2500-1 be examined using the VT-3 examination method. Flaws or degradation identified during the performance of a VT-3 examination must be examined in accordance with the VT-1 examination method, and the criteria in the material specification or IWB 3517.1 must be used to evaluate containment bolting flaws or degradation. As an alternative to performing VT-3 examinations of containment bolted connections that are disassembled during the scheduled performance of Item E1.11, VT-3 examinations of containment bolted connections may be conducted whenever containment bolted connections are disassembled for any reason. The condition in § 50.55a(b)(2)(ix)(H) is similar to the condition for bolted connections in § 50.55a(b)(2)(ix)(G), but applies only to the examination of pressure-retaining bolted connections that are disassembled. The condition requires

flaws or degradation identified during the VT-3 examination to be examined using the VT-1 method. The NRC notes that the VT-1 (and not VT-3) examination method is the method specified in the new Item E8.10 for pressure-retaining bolted connections in the revised Table IWE-2500-1 in the 2006 Addenda through 2008 Addenda of the ASME B&PV Code. Further, the acceptance standard for the VT-1 examination of pressure-retaining bolting in the new paragraph IWE-3530 requires that the relevant conditions, as defined in IWA-9000, and listed in IWB-3517.1, shall be corrected or evaluated to meet the requirements of IWE-3122, prior to continued service. Therefore, the new provision for pressure-retaining bolting in Table IWE 2500-1, as discussed in this document, and the new acceptance standard specified in IWE-3530, as discussed in this document, fully addressed the intent of the condition in § 50.55a(b)(2)(ix)(H). Therefore, the condition in § 50.55a(b)(2)(ix)(H) is not required to be applied for licensees using Subsection IWE, 2004 Edition with the 2006 Addenda and the 2007 Edition through the 2008 Addenda.

The condition in § 50.55a(b)(2)(ix)(I) of the rule requires that the ultrasonic examination acceptance standard specified in IWE-3511.3 for Class MC pressure-retaining components also be applied to metallic liners of Class CC pressure-retaining components. This condition requires that the acceptance standard in IWE-3511.3 also apply to the metallic shell and penetration liners of Class CC pressure-retaining components in the re-designated paragraph IWE-3522, "Ultrasonic Examination," in the 2004 Edition through the 2007 Edition and 2008 Addenda. Therefore, the condition in § 50.55a(b)(2)(ix)(I) is not required to be applied for licensees using Subsection IWE, 2004 Edition through the 2007 Edition and the 2008 Addenda.

The revised paragraph IWE-2310 (IWE-2313 to be specific) and new subparagraphs IWE-2420(c) and IWE-2500(d), in the 2006 Addenda through the 2008 Addenda, address the condition in § 50.55a(b)(2)(ix)(A) of the final rule with regard to requiring evaluation of acceptability of inaccessible areas when conditions exist in accessible areas that could indicate the presence or result in degradation to such inaccessible areas. However, the information specified in the condition to be provided in the ISI Summary Report is not explicitly addressed in the ASME B&PV Code. Therefore, based on a public comment, for expediency to remove part of the condition for certain

addenda, the NRC is dividing the existing condition in 50.55a(b)(2)(ix)(A) into paragraphs (b)(2)(ix)(A)(1) and (b)(2)(ix)(A)(2). The condition in § 50.55a(b)(2)(ix)(A)(1) of the final rule, addressing the requirement for evaluation of inaccessible areas, is not required to be applied for licensees using Subsection IWE, 2006 Addenda through the 2008 Addenda. However, the condition in § 50.55a(b)(2)(ix)(A)(2), addressing the information relative to evaluation of inaccessible areas to be provided in the ISI Summary Report, is required to be applied for licensees using the 2006 Addenda through the 2008 Addenda.

10 CFR 50.55a(b)(2)(ix)(J)

The NRC is amending § 50.55a(b)(2)(ix) to add a new § 50.55a(b)(2)(ix)(J) to place a condition on the use of Article IWE-5000, "System Pressure Tests," of Subsection IWE when applying the 2007 Edition up to and including the 2008 Addenda of the ASME Code, Section XI, for Class MC pressure-retaining components. The revised Article IWE-5000 does not make a distinction between "major" and "minor" modification (or repair/replacement) with regard to the type of pneumatic leakage tests specified following repair/replacement activities. The NRC notes that IWL-5210 provides a reasonable quantitative definition of a repair/replacement activity, in terms of meeting the design basis Construction Code requirements prior to and during the repair/replacement activity, that is considered major for Class CC containments and requiring a containment pressure test to be conducted at the design basis accident pressure (Pa) that would demonstrate structural integrity of the repaired containment. There is no such definition provided in IWE-5000 for Class MC containments. IWE-5000 (2007 Edition with 2008 Addenda) requires a pneumatic leakage test to be performed following welding or brazing associated with repair or replacement activities, prior to returning the component to service. It also allows the test boundary for the pneumatic leak test to be limited to the brazed joints and welds affected by the repair/replacement activity, which is acceptable from the point of ensuring leak-tightness of the locally repaired area. However, it allows a licensee the option of only performing a local bubble test even for a "major" containment modification or repair/replacement, which is not sufficient to provide a verification of global structural integrity. Following "major" containment repair/replacement activities, it makes the

performance of the appropriate pneumatic leakage test (which is a Type A test) in accordance with 10 CFR part 50, Appendix J, optional, which is inconsistent with the NRC position and the provisions in 10 CFR part 50, Appendix J, paragraph IV.A, and hence the NRC is adding a new condition in this rule. It is, and has been, the NRC's position that a 10 CFR part 50, Appendix J, Type A test must be performed following a "major" containment modification or repair/replacement, prior to returning the containment to operation. This is because a "major" containment modification such as the replacement of a large penetration or the creation of large construction opening(s) for replacement of equipment such as steam generators, reactor vessel head, pressurizers, *etc.*, or other similar repair/replacement activity results in the breach of the containment pressure boundary that invalidates the periodic verification of structural and leak tight integrity provided by the previous Type A test as required by the Containment Leakage Rate Testing Program in 10 CFR part 50, Appendix J. Further, the breach of pressure boundary of the magnitude resulting from a "major" containment modification has a global effect on containment structural integrity and not a localized effect. Therefore, performing a Type A test prior to returning to operation, is necessary to provide a reasonable assurance and verification of both containment structural integrity and leakage integrity following restoration of a breach in the containment pressure boundary due to a "major" repair/replacement activity. Thus, the new condition in § 50.55a(b)(2)(ix)(j) of the final rule requires the performance of Type A test following a "major" containment modification of a Class MC containment structure.

The new condition provides a general, qualitative definition of what constitutes a "major" modification or repair/replacement activity for containments consistent with what the NRC has historically considered as major modifications. The new condition also requires that, when applying IWE-5000, if a Type A, B or C test is performed in accordance with 10 CFR part 50, Appendix J, the test pressure and acceptance standard for the test shall also be in accordance with 10 CFR part 50, Appendix J. This is because the test pressure range in IWE-5223.1 seems to apply even for Type B and Type C tests; and the acceptance standard for leakage in IWE-5223.5 is based only on Section V, Article 10, for any pneumatic

leakage test performed when applying IWE-5000 of the 2007 Edition up to and including the 2008 Addenda of Section XI of the ASME Code. The requirement in the new condition for performing a Type A test prior to returning to operation following a major containment modification, is necessary to provide a reasonable assurance and verification of both containment structural and leakage integrity following restoration of a breach in the containment pressure boundary due to the "major" repair/replacement activity of a Class MC containment structure.

10 CFR 50.55a(b)(2)(xv) Appendix VIII Specimen Set and Qualification Requirements

The NRC is amending § 50.55a(b)(2)(xv) so the conditions in that paragraph would not apply to the 2007 Edition through the 2008 Addenda of Section XI of the ASME B&PV Code. Section 50.55a(b)(2)(xv) has conditions that may be used to modify Appendix VIII of Section XI, 1995 Edition through the 2001 Edition. The ASME Boiler and Pressure Vessel Code Committees took action to address these conditions in the 2007 Edition of the Code and revised Appendix VIII to address the NRC's concerns with specimen sets and qualification requirements. Therefore, the final rule does not require these conditions when using the 2007 Edition through the 2008 Addenda of the ASME B&PV Code.

10 CFR 50.55a(b)(2)(xv)(A)(2)

The NRC is amending § 50.55a(b)(2)(xv)(A)(2) to modify the condition to allow for an add-on qualification for austenitic welds with no austenitic base metal side to an existing Supplement 10 qualification.

10 CFR 50.55a(b)(2)(xvi) Appendix VIII Single-Side Ferritic Vessel and Piping and Stainless Steel Piping Examinations

The NRC is amending § 50.55a(b)(2)(xvi) to modify the condition to only apply to those licensees using the 2006 Addenda and earlier editions and addenda of ASME Section XI.

10 CFR 50.55a(b)(2)(xviii) Certification of NDE Personnel

The NRC is amending § 50.55a(b)(2)(xviii)(B) so the current condition in that paragraph would not apply to the 2007 Edition through the 2008 Addenda of Section XI of the ASME B&PV Code. Section 50.55a(b)(2)(xviii)(B) limits the activities that can be performed by NDE personnel certified in accordance with IWA-2316 of the 1998 Edition through the 2004

Addenda of the ASME B&PV Code. These personnel are limited to observing for leakage during system leakage and hydrostatic tests conducted in accordance with IWA-5211(a) and (b). The ASME Boiler and Pressure Vessel Code Committees took action to address this, and modified IWA-2316 in the 2005 Addenda and the 2007 Edition to limit the activities performed by personnel qualified in accordance with IWA-2316. Therefore, the condition is not required when using the 2007 Edition through the 2008 Addenda. Accordingly, the NRC is amending § 50.55a(b)(2)(xviii)(B) for this condition not to apply when using the 2007 Edition through the 2008 Addenda of the ASME B&PV Code.

The NRC is amending § 50.55a(b)(2)(xviii)(C) so the condition in that paragraph would not apply to the 2005 Addenda through the 2008 Addenda of Section XI of the ASME B&PV Code. This paragraph places conditions on the qualification of VT-3 examination personnel certified under paragraph IWA-2317 of the 1998 Edition through the 2004 Addenda. The regulation requires the administering of an initial qualification examination to demonstrate proficiency of this training, and administering subsequent examinations on a 3-year interval. The ASME Boiler and Pressure Vessel Code Committees took action to address this condition and modified IWA-2317 in the 2005 Addenda of the ASME B&PV Code to require a written examination for initial qualification and at least every 3 years thereafter for VT-3 qualification. Therefore, the final rule does not require this condition when using the 2005 Addenda through the 2008 Addenda. The NRC is revising the wording of the condition for clarity in the final rule based on public comment.

10 CFR 50.55a(b)(2)(xix) Substitution of Alternative Methods

The NRC is amending § 50.55a(b)(2)(xix) so the conditions for the substitution of alternative examination methods in that paragraph would not apply when using the 2005 Addenda through the 2008 Addenda. The conditions in § 50.55a(b)(2)(xix) do not allow the use of Section XI, IWA-2240 of the 1998 Edition through the 2004 Edition of the ASME B&PV Code. These conditions also do not allow the use of IWA-4520(c) of the 1997 Addenda through the 2004 Edition of Section XI of the ASME B&PV Code. In 2005, the ASME Boiler and Pressure Vessel Code Committees took action to address these conditions and modified IWA-2240 and deleted IWA-4520(c) in the 2005 Addenda such that alternative

examination methods or newly developed techniques are not allowed to be substituted for the methods specified in the construction code. Therefore, these conditions are not required when using the 2005 Addenda through the 2008 Addenda.

The final rule also imposes the condition that paragraphs IWA-4520(b)(2) and IWA-4521 of the 2007 Edition of Section XI, Division 1, of the ASME B&PV Code, with the 2008 Addenda are not approved for use. In the 2008 Addenda of Section XI of the ASME B&PV Code, the ASME added new provisions in IWA 4520(b)(2) and IWA-4521 that allow the substitution of ultrasonic examination (UT) for radiographic examination (RT) specified in the Construction Code. Substitution of UT for RT as addressed in paragraph IWA-4520(b)(2) of the ASME B&PV Code, Section XI, for the repair/replacement welds in 2008 Addenda is of a concern to the NRC because, depending on flaw type (*i.e.*, volumetric or planar) and orientation, UT and RT are not equally effective for flaw detection and characterization. The NRC had originally identified concerns relative to the calibration blocks to be used, and developed two conditions that appear in RG 1.84, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III, Proposed Revision 34," October 2006.

RT is effective in detecting volumetric-type flaws (*e.g.*, slag, porosity, root concavity, and misalignment), planar type flaws with large openings (*e.g.*, lack of fusion and large cracks in high stressed areas), and those flaws that are oriented in a plane parallel to the X-ray beam. RT is effective in all materials common to the nuclear industry for detecting the type of flaws generated during construction due to workmanship issues and, therefore, ensures an acceptable level of weld quality and safety at the time of construction. In contrast, UT is most effective in detecting and sizing planar-type flaws associated with inservice degradation due to, for example, fatigue or stress corrosion cracking. Significant advances have recently been made regarding the use of UT to detect flaws in cast stainless steel. However, the ASME Code provisions addressing the inspection of cast stainless steels are still under development and are, therefore, not yet published for use. Finally, UT requires more surface scanning area than RT to perform examinations.

To ensure that a UT technique would be capable of detecting typical construction flaws, the NRC requires a licensee to demonstrate, through

performance-based ASME B&PV Code, Section XI, Appendix VIII-like requirements, its capability of identifying the construction flaws which are easily detected by RT. Performance-based qualifications require demonstrations on mockups having flaws with realistic UT responses and with a statistically sufficient number of representative flaws and non-flawed volumes to establish procedure effectiveness and personnel skill. The statistical approach to qualification has been shown to improve the reliability of inspections, to improve the probability of flaw detection, and to reduce the number of false calls. The addition of only two or three construction flaws to a demonstration is not sufficient to capture the variety of flaws common to construction or to statistically evaluate procedure effectiveness and personnel skills.

The NRC is concerned that using the second leg of the ultrasound metal path (V-path) to achieve two direction scanning from only one side of the weld may not be adequate in detecting construction flaws. Single-side examinations have not been demonstrated for construction flaws for any material. Single-side examinations of welds have been successfully qualified for planar flaws in ferritic carbon and low alloy steels but have not been reliably demonstrated for austenitic stainless steel and nickel alloys.

Based on this information, the NRC concludes that the substitution of UT for RT may not be adequate for detecting some construction flaws, specifically in a single-V full penetration groove welds. Therefore, substitution of UT for RT is not generically acceptable. This position is consistent with the NRC's previous position with respect to the review of ASME Code Case N-659-1, which is published in RG 1.193, Revision 2, "ASME Code Cases not Approved for Use." Accordingly, the final rule imposes the condition that paragraphs IWA-4520(b)(2), and IWA-4521 of the 2007 Edition of Section XI, Division 1, with 2008 Addenda are not approved for use.

10 CFR 50.55a(b)(2)(xxi) Table IWB-2500-1 Examination Requirements

The NRC is amending § 50.55a(b)(2)(xxi) to remove and designate as "Reserved" paragraph (b)(2)(xxi)(B) of this section because this condition was not consistent with the NRC's unconditional approval of Code Case N-652-1 in RG 1.147, Revision 15.

10 CFR 50.55a(b)(2)(xxiv) Incorporation of the Performance Demonstration Initiative and Addition of Ultrasonic Examination Criteria

The NRC is amending § 50.55a(b)(2)(xxiv) not to apply the condition when using the 2007 Edition through the 2008 Addenda. Section 50.55a(b)(2)(xxiv) prohibits the use of Appendix VIII, the supplements of Appendix VIII and Article I-3000 of ASME B&PV Code, 2002 Addenda through the 2004 Edition. In 2007, the ASME Boiler and Pressure Vessel Code Committees took action to address this condition and modified Appendix VIII and its Supplements in the 2007 Edition. Therefore, the condition is not required when using the 2007 Edition through the 2008 Addenda, and the final rule eliminates this condition when using the 2007 Edition through the 2008 Addenda.

10 CFR 50.55a(b)(2)(xxv) Evaluation of Unanticipated Operating Events

The NRC had proposed a new § 50.55a(b)(2)(xxv) to condition the use of ASME B&PV Code, Section XI, Nonmandatory Appendix E, "Evaluation of Unanticipated Operating Events." Based on the Probabilistic Fracture Mechanics Analysis (PFMA) provided by commenters, which used the Fracture Analysis of Vessels—Oak Ridge (FAVOR) Code, the same tool used in the PFM analyses supporting the final PTS rule (75 FR 13), the NRC concludes this condition is no longer necessary. The PFMA showed that, based on a selected PWR and BWR RPV having the highest RT_{NDT} of the limiting RPV material and a typical beltline fluence model, the PFMA generated a pressure versus (T - RT_{NDT}) curve for each of the two RPVs by setting the CDF to 1E-6. The analytical results showed that the PFMA results bounds the corresponding Appendix E curve for both the unanticipated isothermal pressure events and the pressurized cool-down events. Since (1) the PFMA methodology is consistent with the PTS rule's underlying methodology, in which large flaws are considered statistically, and (2) the resulting pressure versus (T - RT_{NDT}) curve bounds the corresponding curve based on the current Appendix E approach, the NRC concludes that the current Appendix E methodology, without the NRC's proposed condition, provides an appropriate conservative methodology for evaluating RPV integrity following an unanticipated transient that exceeds the operational limits in PWR plant operating procedures. Therefore, the proposed condition placed on the use of

ASME Code, Section XI, Appendix E in the proposed rule is not included in the final rule.

10 CFR 50.55a(b)(2)(xxvii) Removal of Insulation

The NRC is amending § 50.55a(b)(2)(xxvii) to refer to IWA-5242 of the 2003 Addenda through the 2006 Addenda or IWA-5241 of the 2007 Edition through the 2008 Addenda of Section XI of the ASME B&PV Code for performing VT-2 visual examination of insulated components in systems borated for the purpose of controlling reactivity. The regulations at § 50.55a(b)(2)(xxvii) place specific requirements on when insulation must be removed to visually examine insulated components in accordance with IWA-5242. In the 2007 Edition of the ASME B&PV Code, Section XI, paragraph IWA-5242 was deleted and these requirements were included in paragraph IWA-5241.

10 CFR 50.55a(b)(2)(xxviii) Analysis of Flaws

The NRC is amending § 50.55a(b)(2) to add a new paragraph (b)(2)(xxviii) placing conditions on the use of Section XI, Nonmandatory Appendix A, "Analysis of Flaws." The final rule places a condition on the use of Appendix A related to the fatigue crack growth rate calculation for subsurface flaws defined in paragraph A-4300(b)(1) when the ratio of the minimum cyclic stress to the maximum cyclic stress (R) is less than zero. The fatigue crack growth rate, da/dN , is defined as follows when using Equation (1) in paragraph A-4300(a) and Equation (2) in paragraph A-4300(b)(1):

$$da/dN = 1.99 \times 10^{-10} S (\Delta K_I)^{3.07}$$

Where S is a scaling parameter and ΔK_I is the range of applied stress intensity factor.

S and ΔK_I are defined in A-4300 (b)(1) of the ASME B&PV Code, Section XI, Appendix A as follows:

For $-2 \leq R \leq 0$ and $K_{max} - K_{min} \leq 1.12 \sigma_f \sqrt{\pi a}$, $S = 1$ and $\Delta K_I = K_{max}$

For $R < -2$ and $K_{max} - K_{min} \leq 1.12 \sigma_f \sqrt{\pi a}$, $S = 1$ and $\Delta K_I = (1 - R) K_{max/3}$

For $R < 0$ and $K_{max} - K_{min} > 1.12 \sigma_f \sqrt{\pi a}$, $S = 1$ and $\Delta K_I = K_{max} - K_{min}$

The above guidelines permit reduction of ΔK_I from the value of ($K_{max} - K_{min}$) when $K_{max} - K_{min} \leq 1.12 \sigma_f \sqrt{\pi a}$. This is adequate if the material property σ_f is from test-based data of the component material and if the geometry of the cracked component can be modeled as an edge crack in a half plane, so that the formula $K = 1.12 \sigma \sqrt{\pi a}$ applies. In most ASME B&PV Code, Section XI, Appendix A applications, test-based σ_f is not

available, and the generic value from the ASME B&PV Code tabulations is used. Further, the geometry of a subsurface flaw in a plate differs significantly from the model of an edge crack in a half plane. Consequently, for the case where full ΔK_I should be used, the calculation in accordance with ASME B&PV Code, Section XI, Appendix A may show that $K_{max} - K_{min} \leq 1.12 \sigma_f \sqrt{\pi a}$ and prompt a wrongful reduction of ΔK_I .

To address the use of the generic σ_f value instead of the test-based value for the cracked component and the significant difference between the cracked component geometry and the cracked test-specimen geometry on which the criterion of $1.12 \sigma_f \sqrt{\pi a}$ is derived, the NRC revised the criterion of $1.12 \sigma_f \sqrt{\pi a}$ to 0.8 times $1.12 \sigma_f \sqrt{\pi a}$. By doing so, reduction of ΔK_I will not take place during the range of $K_{max} - K_{min}$ from $0.8 \times 1.12 \sigma_f \sqrt{\pi a}$ to $1.12 \sigma_f \sqrt{\pi a}$, erasing the non-conservatism from the two sources mentioned above. Selection of a multiplying factor of 0.8 is based on the following:

- The 10 percent error that could be introduced for the subsurface flaw configurations having membrane stress correction factors less than 1.12 as indicated in Appendix A, Figure A-3310-1; and
- Another 10-percent error that accounts for the uncertainty in the σ_f value.

Applying the revised criterion of 0.8 times $1.12 \sigma_f \sqrt{\pi a}$, results in the following condition on the use of the fatigue crack growth rate calculation for subsurface flaws defined in paragraph A-4300(b)(1) of Section XI, Nonmandatory Appendix A when R is less than zero:

$$da/dN = 1.99 \times 10^{-10} S (\Delta K_I)^{3.07}$$

For $R < 0$, ΔK_I depends on the crack depth, a, and the flow stress, σ_f . The flow stress is defined by $\sigma_f = 1/2 (\sigma_{ys} + \sigma_{ult})$, where σ_{ys} is the yield strength and σ_{ult} is the ultimate tensile strength in units ksi (MPa) and a is in units in. (mm).

For $-2 \leq R \leq 0$ and $K_{max} - K_{min} \leq 0.8 \times 1.12 \sigma_f \sqrt{\pi a}$, $S = 1$ and $\Delta K_I = K_{max}$

For $R < -2$ and $K_{max} - K_{min} \leq 0.8 \times 1.12 \sigma_f \sqrt{\pi a}$, $S = 1$ and $\Delta K_I = (1 - R) K_{max/3}$

For $R < 0$ and $K_{max} - K_{min} > 0.8 \times 1.12 \sigma_f \sqrt{\pi a}$, $S = 1$ and $\Delta K_I = K_{max} - K_{min}$

10 CFR 50.55a(b)(2)(xxix) Non-Mandatory Appendix R

The NRC is amending § 50.55a(b)(2) to add a new condition in § 50.55a(b)(2)(xxix) to condition the use of ASME B&PV Code, Section XI, Non-Mandatory Appendix R, "Risk-Informed Inspection Requirements of Piping."

The final rule requires licensees to submit an alternative in accordance with § 50.55a(a)(3) and obtain NRC authorization of the proposed alternative prior to implementing RI-ISI programs under Appendix R. The 2004 Edition of the ASME B&PV Code, Section XI, currently incorporated by reference in the regulations, did not contain provisions for RI-ISI. The 2005 Addenda introduced Non-Mandatory Appendix R into Section XI to provide requirements for the RI-ISI of ASME B&PV Code Class 1, 2 and 3 piping. The addition of Appendix R to Section XI was essentially the incorporation of ASME Code Cases N-577 and N-578 into the ASME B&PV Code. The NRC determined that ASME Code Cases N-577 and N-578 were unacceptable for use and are currently listed in RG 1.193, "ASME Code Cases Not Approved for Use," Revision 2. Licensees have been implementing RI-ISI requirements for piping as an alternative to the ASME B&PV Code, Section XI requirements of Tables IWB-2500-1, IWC-2500-1 and IWD-2500-1 submitted in accordance with § 50.55a(a)(3). Adding a condition as § 50.55a(b)(2)(xxvi) that would require licensees to submit an alternative in accordance with § 50.55a(a)(3) and obtain NRC authorization of the proposed alternative prior to implementing Appendix R, RI-ISI programs would ensure that future RI-ISI programs continue to comply with RG 1.178, "An Approach for Plant-Specific Risk-Informed Decisionmaking for Inservice Inspection of Piping," RG1.200, "An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities," and NRC Standard Review Plan 3.9.8, "Risk-Informed Inservice Inspection of Piping."

ASME OM Code

The NRC is amending the introductory text in § 50.55a(b)(3) to incorporate by reference the 2005 and 2006 Addenda of the ASME OM Code into 10 CFR 50.55a. The amendment to § 50.55a(b)(3) also clarifies that Subsections ISTA, ISTB, ISTC, and ISTD, Mandatory Appendices I and II, and Nonmandatory Appendices A through H and J of the ASME OM Code are incorporated by reference.

The conditions in § 50.55a(b)(3)(i), (b)(3)(ii), and (b)(3)(iv) continue to apply to the 2005 and 2006 Addenda because the earlier ASME B&PV Code provisions that these regulations are based on were not revised in the 2005 and 2006 Addenda of the ASME B&PV Code to address the underlying issues

which led the NRC to impose the conditions on the ASME B&PV Code.

The NRC is amending the current requirements in § 50.55a(b)(3)(v) to be consistent with the revised snubber ISI provisions in the 2006 Addenda of the ASME B&PV Code, Section XI. To accomplish this § 50.55a(b)(3)(v) was divided into § 50.55a(b)(3)(v)(A) and § 50.55a(b)(3)(v)(B). Where § 50.55a(b)(3)(v)(A) allows licensees using editions and addenda up to the 2005 Addenda of ASME Section XI to optionally use Subsection ISTD, ASME OM Code in place of the requirements for snubbers in Section XI. Section 50.55a(b)(3)(v)(B) requires licensees using the 2006 Addenda and later editions and addenda of Section XI to follow the requirements of Subsection ISTD of the ASME OM Code for snubbers. Provisions for the ISI of snubbers have been in Subsection ISTD since the ASME OM Code was first issued in 1990.

10 CFR 50.55a(b)(3)(v) Subsection ISTD

Section 50.55a(b)(3)(v) allows licensees using editions and addenda up to the 2004 Edition of the ASME B&PV Code, Section XI to comply with, at their option, Subsection ISTD, ASME OM Code instead of the requirements for snubbers in Section XI. If the licensee chooses to comply with subsection ISTD, § 50.55a(b)(3)(v) requires the snubber preservice and inservice examinations to be performed using the VT-3 visual examination method. The NRC previously imposed this requirement to ensure that an appropriate visual examination method was used for the inspection of integral and non-integral snubber attachments, such as lugs, bolting, and clamps when using Subsection ISTD of the ASME OM Code. Section 50.55a(b)(3)(v)(A) allows licensees using editions and addenda up to the 2005 Addenda of ASME B&PV Code, Section XI, to optionally use Subsection ISTD, ASME OM Code in place of the requirements for snubbers in Section XI and continues to invoke the VT-3 requirement. This option does not apply when using the 2006 Addenda and later editions and addenda of Section XI of the ASME B&PV Code. Figure IWF-1300-1 was revised in the 2006 Addenda of Section XI to clarify that integral and non-integral snubber attachments are in the scope of Section XI. Therefore, the visual examination method specified in the 2006 Addenda and later editions and addenda of Section XI applies to the examination of integral and non-integral snubber attachments. The NRC is thus amending § 50.55a(b)(3)(v)(B) in the final rule to require licensees using the

2006 Addenda and later editions and addenda of Section XI to follow the requirements of Subsection ISTD of the ASME OM Code for snubbers.

10 CFR 50.55a(b)(3)(vi) Exercise Interval for Manual Valves

The NRC is amending the current requirement for exercising manual valves in § 50.55a(b)(3)(vi). The final rule limits the current requirement to the 1999 through 2005 Addenda of the ASME OM Code. The current requirement is not applicable to the 2006 Addenda of the ASME OM Code because the exercise interval in Subarticle ISTC-3540 for manually operated valves was revised in this Addenda to make it the same as the current requirement in § 50.55a(b)(3)(vi).

Reactor Coolant Pressure Boundary, Quality Group B Components, and Quality Group C Components

The NRC is amending § 50.55a(c)(3), (d)(2), and (e)(2) to replace “but—” with “subject to the following conditions” at the end of the introductory text to each paragraph for clarity.

Inservice Testing Requirements

10 CFR 50.55a(f)(5)(iv) Requests for Relief

The NRC is amending § 50.55a(f)(5)(iv) to clarify that licensees are required to submit requests for relief based on impracticality within 12 months after the expiration of the IST interval for which relief is being sought. Section 50.55a(f)(5)(iv) describes the licensee’s responsibility to demonstrate to the satisfaction of the NRC those items determined to be impractical and discusses the timeframe for this determination. The final rule clarifies § 50.55a(f)(5)(iv) to more clearly articulate the requirements for licensee action when compliance with certain code requirements is determined to be impractical. Licensees have interpreted the current language in § 50.55a(f)(5)(iv) in a number of ways, especially regarding NRC approval of their submittal within the specified timeframe. Since the licensee has little or no control over the timeliness of NRC action on their submittal, this interpretation is problematic.

Inservice Inspection Requirements

Snubber Examination and Testing

Paragraphs (g)(2), (g)(3)(i), (g)(3)(ii), the introductory text of paragraph (g)(4), and paragraphs (g)(4)(i) and (g)(4)(ii) of 10 CFR 50.55a reference Section XI of the ASME B&PV Code for component support ISI (including snubber

examination and testing provisions). Section 50.55a(b)(3)(v) allows licensees the option of complying with the provisions in Subsection ISTD of the ASME OM Code for snubber examination and testing in lieu of the ISI provisions for snubber examination and testing in Article IWF-5000 of Section XI of the ASME B&PV Code. However, Article IWF-5000 was deleted in the 2006 Addenda of Section XI. Therefore, the NRC is amending § 50.55a(b)(3)(v) to require that licensees who use the 2006 Addenda and later editions and addenda of Section XI must use the snubber examination and testing provisions in Subsection ISTD of the ASME OM Code.

The NRC is amending § 50.55a(g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i) and (g)(4)(ii) to require that licensees use the provisions for preservice and inservice examination and testing of snubbers in Subsection ISTD of the ASME OM Code when using the 2006 Addenda and later edition of Section XI. Licensees may also use optional code cases in RG 1.192 as approved by the NRC. The NRC is clarifying that preservice examination may meet preservice examination requirements in Section III as an alternative to preservice examination of Section XI. The NRC is also amending the introductory text of § 50.55a(g)(4) to require that licensees using the ASME OM Code shall follow the provisions in Subsection ISTD of the ASME OM Code for examination and testing of snubbers instead of Article IWF-5000 of Section XI. Provisions for examinations and tests of snubbers have been in Article IWF-5000 since Subsection IWF was first issued in the Winter 1978 Addenda of Section XI, but Article IWF-5000 was deleted in the 2006 Addenda of Section XI. Because Article IWF-5000 was deleted, Subarticle IWF-1220 in the 2006 Addenda of Section XI states that the examination and testing requirements for snubbers are now outside the scope of Section XI, and that the examination and test requirements for snubbers can be found in Subsection ISTD of the ASME OM Code.

The NRC is also correcting an error to reinstate rule language adopted in an August 2007 rulemaking (72 FR 49352; August 28, 2007), which was deleted in a final rule (72 FR 71750; December 19, 2007) whose publication closely followed the August 2007 rule. The statement of considerations for the December 2007 rule did not acknowledge or explain the reason for its removal of rule language which was adopted four months earlier. The NRC believes that the December 2007 removal of the rule language adopted in August 2007 was inadvertent, and the

result of the NRC's failure to revise the "December 2007 rule language to reflect the newly-adopted August 2007 rule language, before the December 2007 rule was transmitted to the **Federal Register** for publication.

This correction was not included in the May 4, 2010 proposed rule (75 FR 24324) which preceded this final rule. The NRC finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), that good cause exists for adopting this correction without notice in the **Federal Register** and an opportunity for public comment.

The NRC is also amending § 50.55a(g)(4)(ii) to provide at least 18 months for a specified set of licensees to update and begin implementation of the 2007 Edition and 2008 Addenda versions of Appendix VIII in their next inservice inspection interval. This set of licensees are those whose next inservice inspection interval must begin to be implemented during the period between 12 through 18 months after the effective date of the final rule, and therefore would otherwise be required to implement the 2007 Edition and 2008 Addenda versions of Appendix VIII (providing them less than 18 months to comply with the provisions of the 2007 Edition and 2008 Addenda versions of Appendix VIII). For these licensees, the final rule permits a delay of 6 months in the implementation of Appendix VIII *only* (*i.e.*, these licensees will still be required to update and implement the inservice inspection program during the next inspection interval without delay). Other licensees, whose next inservice inspection interval commences more than 18 months after the final date of the rule, will have sufficient time to develop their programs for the next inservice inspection interval and are not affected by this provision of the final rule.

10 CFR 50.55a(g)(4)(iii) Surface Examinations of High-Pressure Safety Injection Systems

Section 50.55a(g)(4)(iii) currently gives licensees the option of not performing surface examinations of high-pressure safety injection systems as specified in Section XI, Table IWB-2500-1, "Examination Category B-J," Item Numbers B9.20, B9.21 and B9.22. Editions and addenda of Section XI after the 1995 Edition have been modified, and some of the Item Numbers have either changed or been deleted. The surface examination requirement was removed from Table IWB-2500-1 in the 2003 Addenda. Therefore, the final rule requires this condition to apply to those licensees using Code editions and addenda prior to the 2003 Addenda.

10 CFR 50.55a(g)(5)(iii) and (g)(5)(iv) Inservice Inspection Requests for Relief

Section 50.55a(g)(5)(iii) currently requires the licensee to notify the NRC if conformance with certain code requirements are found to be impractical and submit the information to support this determination to the NRC. Section 50.55a(g)(5)(iv) currently requires that when examination requirements of the code are determined to be impractical by the licensee, that the basis for this determination must be demonstrated to the satisfaction of the NRC not later than 12 months after the expiration of the 120-month interval during which the examination is determined to be impractical.

The final rule adds a sentence to § 50.55a(g)(5)(iii) to clarify that a request for relief must be submitted only after the necessary examination has been attempted during a given ISI interval and the ASME B&PV Code requirement determined to be impractical. In the past, licensees have submitted requests under § 50.55a(g)(5)(iii) prior to performing the ASME B&PV Code examination in a given interval based on limited examination coverage from previous ISI 10-year intervals. The NRC believes that this is an inappropriate basis for a determination of impracticality as new examination techniques are often developed from one interval to the next, which could result in a reasonable expectation of improved results. As a result, the NRC believes that a licensee usually cannot make the determination that an examination is indeed impractical without first attempting the examination in the current ISI interval. In addition, if the NRC were to grant relief prior to the component having been examined and the results of the examination are less than stated in the request for relief, the licensee would be required to resubmit the request for relief to address the actual examination. This places an unnecessary burden on the licensee and the NRC to review the same issue twice. Accordingly, the final rule requires that the determination of impracticality should be based on actual attempts to perform a requirement, and that the relief request be submitted only after the licensee has unsuccessfully attempted to perform the inspection in the relevant inspection interval.

The final rule removes the requirement that the basis for the licensee's determination that an examination is impractical be demonstrated to the satisfaction of the NRC not later than 12 months after the expiration of the 120-month interval during which the examination is

determined to be impractical. The current regulatory language is problematic, inasmuch as the current regulations do not explicitly require the licensee to submit a request for relief. This interpretation of the current regulations was reflected in a comment which stated that the current regulations may be interpreted to mean that determinations of impracticality need not be submitted to the NRC for approval (*i.e.*, the licensee merely needed to be able to justify the impracticality determination to the NRC's satisfaction if asked by the NRC). In addition, the NRC recognizes that the licensee has little or no control over the timeliness of NRC action on a licensee's request for relief. Therefore, the final rule removes the current regulatory language, and replaces it with language clearly stating that all licensee determinations of impracticality must be submitted to the NRC for approval.

The proposed rule would have required that a relief request under § 50.55a(g)(5)(iii) be submitted no later than 12 months after the examination has been attempted in a given ISI interval and the licensee has determined that the ASME Code requirement is impractical. Several commenters stated that this proposed change, which differs from the current requirement to submit a single relief request at the end of the ISI interval, would place additional burden on licensees by increasing the number of submittals licensees need to submit for code relief when requirements are determined to be impractical. Rather than submitting one request for relief at the end of the interval for all examination requirements determined to be impractical throughout the 10-year interval as currently allowed, licensees would be required to prepare a submittal within 12 months of every examination that determined a requirement was impractical. The NRC has determined that the administrative burden on the licensee of preparing multiple relief requests throughout the inspection interval, and the concomitant burden on the NRC to act on those relief requests, does not appear to be justified. Therefore, the final rule requires relief requests under paragraph (g)(5)(iv) to be submitted no later than 12 months after the expiration of the 120-month interval for which relief is sought.

10 CFR 50.55a(g)(6)(ii)(E) Reactor Coolant Pressure Boundary Visual Inspections

The NRC is amending § 50.55a(g)(6)(ii)(E)(1) through (g)(6)(ii)(E)(3) to reference Revision 1 of Code Case N-722, and is revising

footnote 1 to clarify requirements in that paragraph that pertain to reactor coolant pressure boundary visual inspections. In the last update to 10 CFR 50.55a, the NRC added new § 50.55a(g)(6)(ii)(E), requiring all PWR licensees to augment their ISI program by implementing ASME Code Case N-722, subject to the conditions specified in § 50.55a(g)(6)(ii)(E)(2) through (g)(6)(ii)(E)(4). ASME Code Case N-722-1, "Additional Examinations for PWR Pressure Retaining Welds in Class 1 Components Fabricated with Alloy 600/82/182 Materials Section XI, Division 1," was published in Supplement 8 of the 2007 Edition of the ASME Boiler and Pressure Vessel Code Nuclear Code Case book. Code Case N-722 has been updated to Revision 1 (N-722-1) and contains one additional note indicating that visual examination of Alloy 600/82/182 materials in flange seal leak-off lines is not required. This change eliminates the need for licensees to submit relief requests under § 50.55a(3)(i) or 50.55a(a)(3)(ii) for flange seal leak-off lines which are not normally exposed to a corrosive environment and are inaccessible for visual examination. The NRC believes that the likelihood of the flange seals being degraded is relatively low. Therefore, the visual inspection of these flange leak-off lines is not needed.

The current wording in the second sentence of footnote 1 to § 50.55a(g)(6)(ii)(E) has generated some confusion, and has the unintended consequence of some licensees believing that they need to submit additional relief requests related to the percentage of inspections to be completed during the current interval. The second sentence in the current footnote was intended to provide guidance to licensees for the distribution of weld inspections required by Code Case N-722 throughout the remainder of a plant's current 10-year ISI period after January 1, 2009. The intent was to require licensees to distribute the population of weld inspections that are required only once in a 10-year interval to be distributed over a licensee's current interval and into the next interval in a manner such as that described in IWA-2400 of the 1994 Addenda and later editions and addenda of Section XI. Because the current wording was not specific, licensees using editions and addenda of Section XI prior to the 1994 Addenda have interpreted the regulation as requiring all the weld inspections required by Code Case N-722 to be distributed over, and inspected during, the remaining periods and outages in

the current interval only, which could be less than 10 years. The final rule revises footnote 1 to § 50.55a(g)(6)(ii)(E) to clarify this issue by directing licensees to use the rules of IWB-2400 of the 1994 Addenda or later editions and addenda of Section XI for scheduling weld inspections for Code Case N-722-1 welds added in the middle of an interval.

10 CFR 50.55a(g)(6)(ii)(F) Examination Requirements for Class 1 Piping and Nozzle Dissimilar-Metal Butt Welds

The NRC proposed adding a new § 50.55a(g)(6)(ii)(F) to require licensees to implement ASME Code Case N-770, "Alternative Examination Requirements and Acceptance Standards for Class 1 PWR Piping and Vessel Nozzle Butt Welds Fabricated with UNS N06082 or UNS W86182 Weld Filler Material With or Without the Application of Listed Mitigation Activities, Section XI, Division 1," with 15 conditions. Code Case N-770 contains baseline and ISI requirements for unmitigated butt welds fabricated with Alloy 82/182 material and preservice and ISI requirements for mitigated butt welds fabricated with Alloy 82/182 material. On December 25, 2009, ASME approved Code Case N-770-1. The ASME prepared Code Case N-770-1 to address comments on Code Case N-770 that NRC had provided to the ASME code committee. The NRC addressed these comments in the proposed rule as conditions on implementation of Code Case N-770.

The NRC reviewed the changes made in Code Case N-770-1 to determine if it was appropriate for referencing in the new § 50.55a(g)(6)(ii)(F) in lieu of Code Case N-770. The NRC concluded that it was appropriate for referencing based on the following considerations. Incorporation by reference of Code Case N-770-1 in lieu of Code Case N-770 allows the NRC to remove eight and partially remove one of the 15 conditions in the proposed rule. The NRC concluded that removing these conditions significantly improves the rule. The basis for removing or modifying each of these proposed conditions is contained in the Analysis of Public Comments document (ADAMS Accession No. ML110280240).

ASME Code Case N-770-1 has, in addition to changes to address proposed NRC conditions, additional changes that made no significant modification to the requirements from N-770. The NRC considers that the editorial changes improve the usability of the rule. Only one technical addition was made in Code Case N-770-1 that was not covered by the proposed rule. The technical addition provides an

alternative examination volume for welds mitigated by optimized weld overlays. The NRC concluded that, with the exception of the one technical addition, Code Case N-770-1 was appropriate for referencing. Therefore, the NRC is amending its regulations to incorporate Code Case N-770-1 by reference instead of Code Case N-770. The NRC is adding a new condition to the rule to preclude the use of the technical addition made to Code Case N-770-1. The NRC has prepared a document, "Review of Changes Between American Society of Mechanical Engineers Boiler and Pressure Vessel Code Cases N-770 and N-770-1 to Support 10 CFR 50.55a Final Rule" (ADAMS Accession No. ML11250292), setting forth the NRC's bases for approval of all of the changes made in Code Case N-770-1.

In addition to the new condition discussed, the NRC is adding a condition and is modifying two conditions from the proposed rule as a result of public comments it received. Because a number of the proposed conditions were not included, many of the remaining conditions in the final rule have been renumbered.

Substitution of the Term "Condition" in 10 CFR 50.55a

The NRC is amending 10 CFR 50.55a to substitute the word "condition(s)" for the words "limitation(s)," "modification(s)," and "provision(s)" throughout 10 CFR 50.55a for consistency. The NRC does not believe it necessary to distinguish among different types of "caveats" that it imposes on the use of the ASME Codes. Therefore, the NRC will now use the term "condition" for clarity and consistency.

IV. Paragraph-by-Paragraph Discussion

Quality Standards, ASME Codes and IEEE Standards, and Alternatives

10 CFR 50.55a(a)

The NRC is amending 10 CFR 50.55a to add the title "Quality standards, ASME Codes and IEEE standards, and alternatives" to paragraph (a).

Applicant/Licensee Proposed Alternatives to the Requirements of 10 CFR 50.55a

10 CFR 50.55a(a)(3)

The NRC is amending 10 CFR 50.55a(a)(3) to clarify that a proposed alternative must be submitted to, and authorized by, the NRC prior to an applicant or licensee implementing the alternative.

Standards Approved for Incorporation by Reference

10 CFR 50.55a(b) Standards Approved for Incorporation by Reference

The NRC is amending 10 CFR 50.55a(b) to add the title "Standards approved for incorporation by reference" to paragraph (b).

The final rule also clarifies that non-mandatory appendices are excluded from the ASME B&PV Code, Section III requirements that are incorporated by reference into 10 CFR 50.55a, and clarifies that only Division 1 requirements of Section III and Section XI are incorporated by reference (not Division 2 and Division 3 requirements). The NRC is also incorporating by reference ASME Code Case N-722-1 and N-770-1 into 10 CFR 50.55a.

ASME B&PV Code, Section III

10 CFR 50.55a(b)(1)

The NRC is amending paragraph (b)(1) to incorporate by reference the 2005 Addenda (Division 1) through 2008 Addenda (Division 1) of Section III of the ASME B&PV Code into 10 CFR 50.55a, subject to the conditions outlined in modified paragraphs (b)(1)(i) through 50.55a(b)(1)(vi) and paragraph (b)(vii). The paragraph modification also includes an editorial change to the references to Section III ASME B&PV Code for clarification purposes. As a result, applicants and licensees may use the 1974 Edition (Division 1) through the 2008 Addenda (Division 1) of Section III of the ASME B&PV Code subject to the conditions contained within modified paragraphs (b)(1)(i) through (b)(1)(vi) and new paragraph (b)(1)(vii).

10 CFR 50.55a(b)(1)(ii) Weld-Leg Dimensions

The NRC is applying the existing condition in paragraph (b)(1)(ii) regarding stress indices used for weld stresses in piping design to the comparable provisions in the ASME Code editions and addenda incorporated by reference in this final rule. The paragraph modification also includes the addition of a condition on the use of paragraph NB-3683.4(c)(2) for applicants and licensees applying the 1989 Addenda through the latest edition and addenda of Section III of the ASME B&PV Code incorporated by reference in this final rule. As a result, this final rule prohibits applicants and licensees from using Footnote 13 from the 2004 Edition through the 2008 Addenda of Section III of the ASME B&PV Code to Figures NC-3673.2(b)-1 and ND-3673.2(b)-1 for welds with leg size less than 1.09 times

the nominal pipe wall thickness (t_n). Also as a result, the use of paragraph NB-3683.4(c)(2), is not allowed for applicants and licensees applying the 1989 Addenda through the latest edition and addenda of Section III of the ASME B&PV Code incorporated by reference in this final rule.

10 CFR 50.55a(b)(1)(iii) Seismic Design of Piping

The NRC is amending paragraph (b)(1)(iii) to impose conditions on the seismic design of piping when licensees use the latest editions and addenda of the ASME B&PV Code, Section III, incorporated by reference in modified paragraph (b). The paragraph is also amended to include an editorial change to replace "limitations and modifications" with "conditions" and "limitation" with "condition." The final rule allows the use of Subarticles NB-3200, NB-3600, NC-3600, and ND-3600 for the seismic design of piping when applying editions and addenda, up to and including the 1993 Addenda of the ASME B&PV Code, Section III, subject to the condition in modified paragraph (b)(1)(ii). The amended paragraph does not allow the use of Subarticles NB-3200, NB-3600, NC-3600, and ND-3600 for the seismic design of piping when applying the 1994 Addenda through the 2005 Addenda of Section III of the ASME B&PV Code except that Subarticle NB-3200 in the 2004 Edition through the 2008 Addenda of Section III of the ASME B&PV Code may be used by applicants and licensees subject to the condition in new paragraph (b)(1)(iii)(A) (see the following discussion on this new paragraph). The final rule allows the use of Subarticles NB-3200, NB-3600, NC-3600, and ND-3600 for the seismic design of piping when applying the 2006 Addenda through the 2008 Addenda of Section III of the ASME B&PV Code, subject to the two new conditions in new paragraphs (b)(1)(iii)(A) and (b)(1)(iii)(B).

10 CFR 50.55a(b)(1)(iii)(A)

The NRC is amending 10 CFR 50.55a(b)(1)(iii) to add a new paragraph (b)(1)(iii)(A) which requires licensees and applicants using Note (1) of Figure NB-3222-1 in Section III of the 2004 Edition up to and including the 2008 Addenda of the ASME B&PV Code to include reversing dynamic loads in calculating primary bending stresses, if consideration of these loads is warranted by subparagraph NB-3223(b).

10 CFR 50.55a(b)(1)(iii)(B)

The NRC is amending 10 CFR 50.55a(b)(1)(iii) to add a new paragraph (b)(1)(iii)(B) which imposes a

condition on the use of Subarticle NB-3600 of the ASME B&PV Code, Section III when applying the 2006 Addenda through the 2008 Addenda of Section III of the ASME B&PV Code by requiring the material and D_o/t requirements found in NB-3656(b) to be adhered to for all Service Limits if the Service Limits include reversing dynamic loads which are not required to be combined with non-reversing dynamic loads, and the alternative rules for reversing dynamic loads are used. As such, per NB-3656(b), the final rule requires that licensee's adhere to a D_o/t ratio limitation requiring this ratio to be less than 40 for all Service Limits when evaluating the seismic design of Class 1 piping. Paragraph (b)(1)(iii) specifies both whether the condition applies and the circumstances in which it applies.

10 CFR 50.55a(b)(1)(iv) Quality Assurance

The NRC is amending paragraph (b)(1)(iv) to allow the use of the 1994 Edition of NQA-1 when applying the 2006 Addenda and later editions of the ASME B&PV Code, Section III, up to the 2008 Addenda. Previously paragraph (b)(1)(iv) permitted the use of NQA-1 up to the 1992 Edition.

10 CFR 50.55a(b)(1)(vii) Capacity Certification and Demonstration of Function of Incompressible-Fluid Pressure-Relief Valves

In the 2006 Addenda, new requirements were added to the ASME Code, Section III, that have a parallel structure in paragraphs NB-7742, NC-7742, and ND-7742 for Class 1, 2, and 3 incompressible-fluid, pressure relief valves, respectively. These new paragraphs address new valve designs having a range of possible sizes and set-pressure conditions. The method described in these paragraphs for performing the tests and evaluation data involves performing tests at less than the highest value of the set-pressure range and establishing an incompressible fluid flow coefficient of discharge that then allows extrapolation of capacities to higher pressures. These new paragraphs address circumstances in which a certified test facility lacks the fluid-pressure capability at the necessary flow rate for testing a new, incompressible-fluid, pressure-relief valve design. Due to a printing error in the ASME Code for paragraph NB-7742(a)(2), some words were omitted. The NRC is amending paragraph (b)(1)(vii) to add a condition to allow use of NB-7742(a)(2) when the language intended to be included in the Code is used.

ASME B&PV Code, Section XI

10 CFR 50.55a(b)(2)

The NRC is amending the introductory text to paragraph (b)(2) to incorporate by reference only Subsections IWA, IWB, IWC, IWD, IWE, IWF, IWL, Mandatory and Non-Mandatory Appendices, of the 2005 Addenda through 2008 Addenda of Section XI of the ASME B&PV Code, with conditions, into 10 CFR 50.55a. It is also amended to make clear that references to Section XI are to Section XI of the ASME B&PV Code.

10 CFR 50.55a(b)(2)(i)

The NRC is deleting the requirements of paragraph (b)(2)(i), which address limitations on specific editions and addenda, and is designating the paragraph as "Reserved." Licensees are no longer using these older editions (1974 and 1977 Editions) and addenda of the ASME B&PV Code.

10 CFR 50.55a(b)(2)(iii)

The NRC is deleting the requirements of paragraph (b)(2)(iii), which address steam generator tubing, and is designating this paragraph as "Reserved."

10 CFR 50.55a(b)(2)(iv)

The NRC is deleting the requirements of paragraph (b)(2)(iv), which address pressure retaining welds in ASME Code Class 2 piping, and is designating this paragraph as "Reserved."

10 CFR 50.55a(b)(2)(v)

The NRC is deleting the requirements of paragraph (b)(2)(v), which address the evaluation procedures and acceptance criteria for austenitic piping when applying the Winter 1983 Addenda and the Winter 1984 Addenda of Section XI, and is designating this paragraph as "Reserved."

10 CFR 50.55a(b)(2)(vi)

This paragraph addresses the pertinent editions and addenda of the ASME B&PV Code for which licensees must utilize when implementing the initial inservice inspection requirements for containment structures. The NRC is amending paragraph (b)(2)(vi) to clarify that, in accordance with the paragraph, licensees may use either the 1992 Edition with the 1992 Addenda or the 1995 Edition with the 1996 Addenda of Subsection IWE and Subsection IWL of the ASME B&PV Code, Section XI, for the initial 120-month inspection interval, subject to the conditions in paragraphs (b)(2)(viii) and (b)(2)(ix), including the new condition identified in paragraph (b)(2)(ix)(f). Following the

initial 120-month inspection interval, successive 120-month inspection interval updates must be implemented in accordance with the provisions of paragraph (g)(4)(ii).

10 CFR 50.55a(b)(2)(viii)

This paragraph, which addresses the inservice examination of concrete containments in accordance with Subsection IWL of the ASME B&PV Code, Section XI, is amended so that the conditions in paragraphs (b)(2)(viii)(F) and (b)(2)(viii)(G) do not apply when using the 2007 Edition to the latest edition and addenda incorporated by reference into § 50.55a (currently the 2008 Addenda of the ASME B&PV Code).

10 CFR 50.55a(b)(2)(ix)

This paragraph addresses the examination of metal containments and the liners of concrete containments in accordance with Subsection IWE of the ASME B&PV Code, Section XI. The NRC is dividing the existing condition in paragraph (b)(2)(ix)(A) into paragraphs (b)(2)(ix)(A)(1) and (b)(2)(ix)(A)(2). The NRC is also amending the introductory text of this paragraph so that the conditions in paragraphs (b)(2)(ix)(F), (b)(2)(ix)(G), (b)(2)(ix)(H) and (b)(2)(ix)(I) do not apply when using the 2004 Edition with 2006 Addenda through the 2007 Edition with 2008 Addenda of Subsection IWE of the ASME B&PV Code, Section XI. Also, the NRC is amending the introductory text of this paragraph so that the condition in paragraph (b)(2)(ix)(I) does not apply when using the 2004 Edition, up to and including the 2005 Addenda of Subsection IWE of the ASME B&PV Code, Section XI.

10 CFR 50.55a(b)(2)(ix)(f)

The NRC is amending paragraph (b)(2)(ix) to add a new paragraph (b)(2)(ix)(f) to address pressure testing requirements following major modifications of Class MC containment structures when applying Article IWE-5000, of Subsection IWE of the 2007 Edition to the latest edition and addenda incorporated by reference into § 50.55a (currently the 2008 Addenda of the ASME B&PV Code, Section XI).

10 CFR 50.55a(b)(2)(xv)

The NRC is amending the requirements in paragraph (b)(2)(xv), which address Appendix VIII specimen set and qualification requirements, by limiting the use of the provisions described in paragraphs (b)(2)(xv)(A) through (b)(2)(xv)(M) to licensees using the B&PV Code 2001 Edition and earlier editions and addenda. Additionally,

paragraph (b)(2)(xv)(A)(2) is amended to allow a qualification for austenitic welds with no austenitic base metal side to be added on to an existing Supplement 10 qualification.

10 CFR 50.55a(b)(2)(xvi)

The NRC is amending the requirements in paragraph (b)(2)(xvi), which address Appendix VIII single-sided ferritic-vessel and piping and stainless steel piping examination, to limit the condition to those licensees using the editions and addenda of ASME Section XI prior to the 2007 Edition on Section VIII.

10 CFR 50.55a(b)(2)(xviii)(B)

The NRC is amending paragraph (b)(2)(xviii)(B), which addresses certification of NDE personnel that observe leakage during system leakage and hydrostatic testing, such that the condition would only apply to editions and addenda prior to the 2007 Edition of Section XI.

10 CFR 50.55a(b)(2)(xviii)(C)

The NRC is amending paragraph (b)(2)(xviii)(C), which addresses certification of NDE personnel, such that the current conditions on the qualification of VT-3 examination personnel requiring initial qualification examinations and subsequent examinations on a 3-year interval would only apply to the editions and addenda prior to the 2005 Addenda of Section XI.

10 CFR 50.55a(b)(2)(xix)

The NRC is amending paragraph (b)(2)(xix), which addresses substitution of alternative methods, so the current conditions for the substitution of alternative examination methods in that paragraph would not apply when using the 2005 Addenda through the 2008 Addenda. The paragraph is also amended to impose the condition that paragraphs IWA-4520(b)(2) and IWA-4521 of the 2007 Edition of Section XI, Division 1, with 2008 Addenda, are not approved for use.

10 CFR 50.55a(b)(2)(xxi)

The NRC is deleting the requirements of paragraph (b)(2)(xxi)(B), which addressed examination requirements for Examination Category B-G-2, Item B7.80 bolting, and designating it as "Reserved." This condition was inconsistent with the NRC's unconditional approval of Code Case N-652-1, "Alternative Requirements to Categories B-G-1, B-G-2, and C-D Bolting Examination Methods and Selection Criteria" in RG 1.147, Revision 15.

10 CFR 50.55a(b)(2)(xxiv)

The NRC is amending the requirements in paragraph (b)(2)(xxiv), which addresses incorporation of the performance demonstration initiative and addition of ultrasonic examination criteria, so that the current condition would not apply when using the 2007 Edition through the 2008 Addenda of Section XI of the ASME B&PV Code.

10 CFR 50.55a(b)(2)(xxvii)

The NRC is amending the requirements in paragraph (b)(2)(xxvii), which address removal of insulation, to add a condition to refer to paragraph IWA-5241 instead of IWA-5242 for the 2007 Edition and later addenda of Section XI of the ASME B&PV Code.

10 CFR 50.55a(b)(2)(xxviii)

The NRC is adding a new paragraph (b)(2)(xxviii), *Analysis of flaws*, which conditions the use of the fatigue crack growth rate calculation for subsurface flaws defined in paragraph A-4300(b)(1) of Section XI, Nonmandatory Appendix A when the ratio of the minimum cyclic stress to the maximum cyclic stress (R) is less than zero.

10 CFR 50.55a(b)(2)(xxix)

The NRC is adding a new paragraph (b)(2)(xxix), which conditions the use of ASME B&PV Code, Section XI, Non-Mandatory Appendix R, to require licensees to submit an alternative in accordance with paragraph (a)(3) and obtain NRC authorization of the proposed alternative prior to implementing Appendix R, RI-ISI programs.

ASME OM Code

10 CFR 50.55a(b)(3)

The NRC is amending the introductory text of paragraph (b)(3) to require that the 2004 Edition with the 2005 and 2006 Addenda of the ASME OM Code be used during the initial 120-month IST interval under paragraph (f)(4)(i) and during mandatory 120-month IST program updates under paragraph (f)(4)(ii). The amendment also allows users to voluntarily update their IST programs to the 2004 Edition with the 2005 and 2006 Addenda of the ASME OM Code under paragraph (f)(4)(iv).

10 CFR 50.55a(b)(3)(v)

The NRC is amending paragraph (b)(3)(v) to require that the provisions in Subsection ISTD of the ASME OM Code be used for the inservice examination and testing of snubbers when using the 2006 Addenda and later editions and addenda of Section XI.

10 CFR 50.55a(b)(3)(vi)

The NRC is amending paragraph (b)(3)(vi) to require that the current condition for exercising manual valves continue to apply when using the 1999 through 2005 Addenda of the ASME OM Code. This condition does not apply to the 2006 Addenda and later editions and addenda of the ASME OM Code.

Reactor Coolant Pressure Boundary, Quality Group B Components and Quality Group C Components

The NRC is amending paragraphs (c)(3), (d)(2), and (e)(2) to replace “but—” with “subject to the following conditions” at the end of the introductory text to the paragraphs for clarity.

Inservice Testing Requirements

10 CFR 50.55a(f)(5)(iv)

The NRC is amending paragraph (f)(5)(iv) to clarify that licensees are required to submit requests for relief based on impracticality within 12 months after the expiration of the IST interval for which relief is being sought.

Inservice Inspection Requirements

10 CFR 50.55a(g)(2), (g)(3)(i), (g)(3)(ii), and the Introductory Text of (g)(4)

The NRC is amending paragraphs (g)(2), (g)(3)(i), and (g)(3)(ii) to require that the provisions in the ASME OM Code, and the optional ASME code cases listed in RG 1.192, be used for the examination and testing of snubbers. The NRC is amending the introductory text of paragraph (g)(4) to require that licensees use the provisions in the ASME OM Code for the examination and testing of snubbers.

10 CFR 50.55a(g)(4)(i)

The NRC is amending paragraph (g)(4)(i) to require that the optional code cases listed in RG 1.192 be followed when using the ASME OM Code. The NRC is also correcting an earlier error which deleted rule language in this paragraph which is applicable to combined licenses under 10 CFR part 52. The restored rule language makes clear that, for combined license holders under 10 CFR part 52, the inservice examinations for the initial 120-month inspection interval must comply with the inservice examination requirements in the latest edition and addenda of the Code approved by the NRC in § 50.55a on the date 12 months before the date scheduled for initial loading of fuel under a combined license under 10 CFR part 52, except as allowed—as with operating licenses under 10 CFR part

50—under the remainder of paragraph (g)(4)(i).

10 CFR 50.55a(g)(4)(ii)

The NRC is amending paragraph (g)(4)(ii) to allow the optional code cases listed in RG 1.192 to be followed when using the ASME OM Code. Paragraph (g)(4)(ii) is also amended to provide up to a 6-month delay in the implementation of the 2007 Edition and 2008 Addenda provisions of Appendix VIII for those licensees whose next inspection interval must be implemented in the period between 12 through 18 months after the effective date of the final rule. Other licensees, whose next inservice inspection interval commences more than 18 months after the final date of the rule, are not affected by this provision of the final rule.

10 CFR 50.55a(g)(4)(iii)

The NRC is amending paragraph (g)(4)(iii) to provide the proper references to Section XI, Table IWB-2500-1, “Examination Category B–J,” Item Numbers B9.20, B9.21 and B9.22, and to limit the condition’s applicability to the editions and addenda prior to the 2003 Addenda of Section XI.

10 CFR 50.55a(g)(5)(iii)

The NRC is amending paragraph (g)(5)(iii) by adding a sentence to clarify that a request for relief must be submitted to the NRC only after an examination has been attempted during a given ISI interval and the ASME Code requirement determined to be impractical. These requests for relief describing the determinations that the code requirement is impractical must be submitted to the NRC no later than 12 months after the expiration of the initial or subsequent 120-month inspection interval for which relief is sought.

10 CFR 50.55a(g)(5)(iv)

The NRC is amending paragraph (g)(5)(iv) to clarify that licensees are required to submit requests for relief based on impracticality no later than 12 months after the end of the ISI interval for which relief is being sought.

10 CFR 50.55a(g)(6)(ii)(E)(1) Through (g)(6)(ii)(E)(3)

The NRC is amending paragraphs (g)(6)(ii)(E)(1) through (g)(6)(ii)(E)(3) by changing the requirement to implement Code Case N-722 to a requirement to implement Code Case N-722-1.

10 CFR 50.55a(g)(6)(ii)(F)

The final rule incorporates ASME Code Case N-770-1 by reference in paragraph (g)(6)(ii)(F)(1). The NRC is not including the following proposed

conditions in this final rule, since they are addressed in Code Case N-770-1: paragraphs (g)(6)(ii)(F)(5), (6), (8), (9), (10), (11), (13), and (14). The NRC is not including part of the proposed condition in paragraph (g)(6)(ii)(F)(7), since the part is addressed in Code Case N-770-1. Because the NRC did not include these proposed conditions in the final rule, the numbering of the conditions in the final rule differs from that of the proposed rule.

Paragraph (g)(6)(ii)(F)(2) pertains to obtaining NRC approval prior to reclassification of welds under the Inspection Items of Code Case N-770. All mitigation techniques discussed in Code Case N-770, with the exception of Mechanical Stress Improvement Process, are covered by separate ASME Code Cases. These Code Cases are subject to approval by the NRC. As ASME completes these mitigation Code Cases, the NRC will review and approve them, if appropriate, possibly with conditions. The NRC uses RG 1.147, which is incorporated by reference in 10 CFR 50.55a, to endorse approved Code Cases for generic use. Based on the wording of paragraph (g)(6)(ii)(F)(2), as the NRC endorses mitigation Code Cases in the RG, the rule permits licensees to categorize mitigated welds in the corresponding Inspection Items in Code Case N-770-1, without a separate NRC review of the classification or reclassification. This condition is unchanged from the proposed rule.

Paragraph (g)(6)(ii)(F)(3) pertains to the schedule for completing baseline examinations. The final rule extends the timing for completing baseline examinations. Previous examinations of these welds can be credited for baseline examinations if they were performed using Section XI, Appendix VIII requirements and met the Code required examination volume for axial and circumferential flaws of essentially 100 percent. For butt welds that received a MRP-139 examination that did not fully meet Section XI, Appendix VIII requirements or achieve essentially 100 percent coverage, licensees can re-perform the baseline examination to meet these requirements or obtain NRC authorization of alternative examination requirements in accordance with 10 CFR 50.55a(a)(3)(i) or (ii) by the end of next refueling outage that occurs after six months from the effective date of the final rule. A licensee may choose to use previous inspections of dissimilar metal butt welds performed under the plant's ASME Code, Section XI, Inservice Inspection program to meet the paragraph (g)(6)(ii)(F)(3) baseline requirement. This is acceptable provided the previous inspection falls

within the re-inspection period for welds in ASME Code Case N-770-1, Table 1, Inspection Items A-1, A-2, and B. Additionally, the NRC-approved alternative examination coverage for these welds during the current 10-year inservice inspection interval remain applicable. In all of these cases the previously approved alternative will continue to apply for the duration authorized by the NRC. In the final rule the NRC modified the proposed condition to extend the timing for completing baseline examinations and to address credit for previous baseline examinations.

Paragraph (g)(6)(ii)(F)(4) pertains to the requirement for satisfying axial examination coverage of welds. The discussion for paragraph (g)(6)(ii)(F)(4) contains guidance on satisfying the axial examination coverage requirement during previous baseline examinations. This condition is unchanged from the proposed rule.

Paragraph (g)(6)(ii)(F)(5) requires that all hot-leg temperature welds in the Code Case N-770-1 Inspection Items G, H, J and K for inlays and onlays be inspected each interval and specifies requirements for sample inspection of cold leg temperature welds in these Inspection Items. This condition prohibits sample inspection of hot leg temperature welds in Inspection Items G, H, J, and K. This condition was part of paragraph (g)(6)(ii)(F)(7) of the proposed rule. This part of the condition is unchanged from the proposed rule.

Paragraph (g)(6)(ii)(F)(6) pertains to submitting reports to the NRC for mitigated welds whose volumetric examination detects new flaws or growth of existing flaws in the required examination volume. This condition was included in paragraph (g)(6)(ii)(F)(12) of the proposed rule. This condition is unchanged from the proposed rule.

Paragraph (g)(6)(ii)(F)(7) requires that the thickness of the inlay or onlay be used as the thickness "t" when applying the acceptance standards in ASME Section XI, IWB-3514, for planar flaws contained within the inlay or onlay in Inspection Items G, H, J, and K. This condition was included in paragraph (g)(6)(ii)(F)(15) of the proposed rule. In the final rule paragraph (g)(6)(ii)(F)(7) is expanded to clarify that for planar flaws in the balance of the dissimilar metal weld examination volume, the thickness "t" in IWB-3514 is the combined thickness of the inlay or onlay and the dissimilar metal weld.

Paragraph (g)(6)(ii)(F)(8) prohibits sample inspection of welds mitigated by optimized weld overlays in Inspection

Items D and E. This condition was included in paragraph (g)(6)(ii)(F)(16) of the proposed rule. This condition is unchanged from the proposed rule.

Paragraph (g)(6)(ii)(F)(9) is a new condition as a result of public comments. This condition removes the requirement of Code Case N-770-1 to spread the initial examinations of the Inspection Item D welds mitigated in the same inspection period throughout years 3 through 10 following application of stress improvement. For the extent and frequency of examination in Table 1, the condition requires that the initial examination for all Inspection Item D welds shall be performed no sooner than the third refueling outage and no later than 10 years following stress improvement application. The condition addresses deferral of the examinations to the end of the interval by repeating the previous requirement, that is, to perform the initial examination of Inspection Item D welds no sooner than the third refueling outage and no later than 10 years following stress improvement application.

Paragraph (g)(6)(ii)(F)(10) is a new condition as a result of incorporating Code Case N-770-1 in lieu of Code Case N-770. Note 2 of Figure 5(a) in Code Case N-770-1 permits the use of an alternative examination volume for an alternative examination volume for welds mitigated by optimized weld overlays. This alternative examination volume was not issued as part of the proposed rule and, therefore, this condition in the final rule prohibits the use of the alternative examination volume. While the NRC does not have a technical objection to Note 2 of Figure 5(a), licensees must obtain NRC authorization to use the alternative examination volume pursuant to 10 CFR 50.55a(a)(3)(i) or (ii).

10 CFR 50.55a(g)(6)(ii)(E)(1) Through (g)(6)(ii)(E)(3)

The NRC is amending paragraphs (g)(6)(ii)(E)(1) through (g)(6)(ii)(E)(3) to update the requirement to implement Code Case N-722-1. The amendment also clarifies that for inspections conducted once per interval, the portion of welds to be inspected in the remaining portion of the interval is based on rules already established by the ASME B&PV Code.

Footnote 1 to 10 CFR 50.55a(g)(6)(ii)(E)

The NRC is amending footnote 1 to paragraph (g)(6)(ii)(E) to clarify that for inspections conducted once per interval, the portion of welds to be inspected in the remaining portion of the interval be based on rules already

established by the ASME B&PV Code, Section XI, paragraph IWB-2400.

Substitution of the Term "Condition" in 10 CFR 50.55a

The NRC is amending 10 CFR 50.55a to substitute the words "limitation(s)," "modification(s)," and "provision(s)" with the word "condition(s)" throughout the regulations for consistency.

V. Generic Aging Lessons Learned Report

In December 2010, the NRC issued "Generic Aging Lessons Learned (GALL) Report," NUREG-1801, Revision 2, for applicants to use in preparing their license renewal applications. The GALL Report evaluates existing programs and documents the bases for determining when existing programs, without change or augmentation, are adequate for aging management in accordance with the license renewal rule, as given in 10 CFR 54.21(a)(3). In Revision 2 of the GALL Report, editions of the ASME B&PV Code, Section XI, Subsections IWB, IWC, IWD, IWE, IWF, and IWL from the 1995 Edition through the 2004 Edition were evaluated and were found to be acceptable editions and addenda for complying with the requirements of 10 CFR 54.21(a)(3), unless specifically noted in certain sections of the GALL Report. For example, GALL Report Section XI.S1, "ASME Section XI, Subsection IWE," specifically addresses the 1992 Edition of ASME B&PV Code, Section XI, Subsection IWE.

In the GALL Report, Section XI.M1, "ASME Section XI Inservice Inspection, Subsections IWB, IWC, and IWD;" Section XI.S1, "ASME Section XI, Subsection IWE;" Section XI.S2, "ASME Section XI, Subsection IWL;" and Section XI.S3, "ASME Section XI, Subsection IWF" describe the evaluation and technical bases for determining the adequacy of these ASME Code subsections. In addition, many other aging management programs (AMPs) in the GALL Report rely in part, but to a lesser degree, on the requirements in the ASME B&PV Code, Section XI.

The NRC has evaluated Subsections IWB, IWC, IWD, IWE, IWF, and IWL of Section XI of the ASME B&PV Code, 2004 Edition with the 2005 and 2006 Addenda through the 2007 Edition with the 2008 Addenda as part of the § 50.55a amendment process to determine if the conclusions of the GALL Report also apply to AMPs that rely upon the ASME B&PV Code editions and addenda that are incorporated by reference into § 50.55a by this rule. The NRC finds that the 2004 Edition, inclusive of the 2005

and 2006 Addenda, and the 2007 Edition, inclusive of the 2008 Addenda of Section XI of the ASME B&PV Code, Subsections IWB, IWC, IWD, IWE, IWF, and IWL, as subject to the conditions of this rule, are acceptable to be adopted as AMPs for license renewal and the conclusions of the GALL Report remain valid, except where specifically noted and augmented in the GALL Report. Accordingly, an applicant for license renewal may use, in its plant-specific license renewal application, Subsections IWB, IWC, IWD, IWE, IWF, and IWL of Section XI of the 2004 Edition with the 2005 and 2006 Addenda through the 2007 Edition with the 2008 Addenda of the ASME B&PV Code, subject to conditions in this rule, as acceptable alternatives to the requirements of the 1995 Edition through the 2004 Edition of the ASME B&PV Code, Section XI, as referenced in Revision 2 of the GALL Report. Similarly, a licensee approved for license renewal that relied on the GALL AMPs may use Subsections IWB, IWC, IWD, IWE, IWF, and IWL of Section XI of the 2004 Edition inclusive of the 2005 and the 2006 Addenda through the 2007 Edition with the 2008 Addenda of the ASME B&PV Code as acceptable alternatives to the AMPs described in the Revision 2 of the GALL report. However, a licensee must assess and follow applicable NRC requirements with regard to changes to its licensing basis.

The NRC, however, notes that the GALL Report includes Subsection IWE AMP that is evaluated based on the requirements in the 1992 Edition through 2004 Edition of Section XI of the ASME B&PV Code. Also, some of the terminology used and some details in this AMP is based on the 1992 Edition. Since this AMP in Revision 2 of the GALL report has a specific ASME B&PV Code year in the description of the AMP or in one or more of the ten elements, the details in the AMP based on a specific ASME B&PV Code edition may not be accurate for other editions.

Revision 2 of the GALL Report includes AMPs that are based on the requirements in the 1995 Edition through the 2004 Edition of Section XI of the ASME B&PV Code but in which the AMPs may recommend additional augmentation of the Code requirements or the use of specific Code Edition or Addenda in order to achieve adequate aging management for license renewal. The technical or regulatory aspects of the AMPs, for which augmentation is recommended, also apply if using the 2004 Edition inclusive of the 2005 Addenda, or the 2007 Edition, inclusive of the 2008 Addenda, of Section XI of

the ASME B&PV Code to meet the requirements of 10 CFR 54.21(a)(3). A license renewal applicant may either augment its AMPs in these areas, as described in the GALL report, or propose alternatives (exceptions) for the NRC to review as part of a plant-specific program element justification for its AMP. GALL Revision 1, in AMP XI.M11A, provides an acceptable approach for aging management—through inservice inspection—of PWR nickel-alloy upper vessel head penetration nozzles. This inservice inspection is the same as the inservice inspection mandated by Order EA-03-009, "Issuance of Order Establishing Interim Inspection Requirements for Reactor Pressure Vessel Heads at Pressurized Water Reactors (PWRs)," as amended by the First Revision of the Order. GALL Revision 2, in GALL AMP XI.M11B, "Cracking of Nickel-Alloy Components and Loss of Material Due to Boric Acid-Induced Corrosion in Reactor Coolant Pressure Boundary Components (PWRs Only)," provides inspection guidance for all PWR nickel-alloy reactor coolant pressure boundary (RCPB) components (including nickel-alloy welds) and nickel alloy aging management review line items. Thus, AMP XI.M11B in GALL Revision 2 supersedes the provisions of GALL Revision 1 AMP XI.M11A. GALL Revision 2 AMP XI.M11B is based on, and is consistent with the provisions of several ASME Code Cases addressing inspection of nickel alloy upper vessel head penetration nozzles which have been endorsed by the NRC (with conditions in 10 CFR 50.55a). Accordingly, new or current license renewal applicants who identify consistency with GALL AMP XI.M11B through compliance with 10 CFR 50.55a(g)(6)(ii)(D), (g)(6)(ii)(E), and (g)(6)(ii)(F) need not take an exception to the program elements in GALL AMP XI.M11B. Licensees that have been granted a renewed operating license will eventually update their ISI programs to comply with the Code Cases on inspection of nickel alloy upper vessel head penetration nozzles, in accordance with § 50.55a(g). Accordingly, these licensees will eventually become consistent with GALL AMP XI.M11B.

VI. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following:

Public Document Room (PDR): The NRC PDR is located at 11555 Rockville Pike, Room O-1F21, Rockville, Maryland 20852.

Federal rulemaking Web site: Public comments and supporting material related to this final rule can be found at

<http://regulations.gov> by searching on the Docket ID NRC-2008-0554.

The NRC's Library: The NRC's Library is located at <http://www.nrc.gov/reading-rm.html>.

Document	PDR	Rulemaking web site	Library
Analysis of Public Comments	X	.....	ML110280240.
ASME B&PV Code*	X	.....
ASME Code Case N-770-1*	X	.....
ASME Code Case N-722-1*	X	.....
ASME OM Code*	X	.....
EPRI Report NP-5151**, "Evaluation of Reactor Vessel Beltline Integrity Following Unanticipated Operating Events," April 1987.	.....	.....
GALL Report, NUREG-1801, Rev.1, September 2005,	X	.....	ML052770419.
Volume 1	X	.....	ML052780376.
Volume 2 .....	.....	.....
NQA-1*, "Quality Assurance Requirements for Nuclear Facilities," 1994 Edition.	.....	.....
NUREG-0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants—LWR Edition.	X	.....	reading-rm/doc-collections/nuregs/staff/sr0800/
PNNL-19086, "Replacement of Radiography with Ultrasonics for the Non-destructive Inspection of Welds—Evaluation of Technical Gaps—An Interim Report".	.....	.....	ML1010312543.
Public Submissions (Comments) on Proposed Rule .....	.....	X	ML103200546.
Regulatory Analysis and Backfit Considerations for Final Amendment 10 CFR 50.55a, "Codes and Standards".	X	X	ML110320011.
Regulatory Guide 1.178, "An Approach for Plant-Specific Risk-Informed Decisionmaking for Inservice Inspection of Piping".	X	.....	ML032510128.
Regulatory Guide 1.193, Revision 2, "ASME Code Cases not Approved for Use"	X	.....	ML072470294.
Regulatory Guide 1.200, "An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities".	X	.....	ML090410014.
"Review of Changes Between American Society of Mechanical Engineers Boiler and Pressure Vessel Code Cases N-770 and N-770-1 to Support 10 CFR 50.55a Final Rule".	X	.....	ML111250292.
Standard Review Plan 3.9.8, "Risk-Informed Inservice Inspection of Piping"	X	.....	ML032510135.

* Available on the ASME Web site.

** Available on the EPRI Web site.

VII. Voluntary Consensus Standards

Section 12(d)(3) of the National Technology Transfer and Advancement Act of 1995, Public Law 104-113 (NTTAA), and implementing guidance in U.S. Office of Management and Budget (OMB) Circular A-119 (February 10, 1998), requires each Federal government agency (should it decide that regulation is necessary) to use a voluntary consensus standard instead of developing a government-unique standard. An exception to using a voluntary consensus standard is allowed where the use of such a standard is inconsistent with applicable law or is otherwise impractical. The NTTAA requires Federal agencies to use industry consensus standards to the extent practical; it does not require Federal agencies to endorse a standard in its entirety. Neither the NTTAA nor Circular A-119 prohibit an agency from adopting a voluntary consensus standard while taking exception to specific portions of the standard, if those provisions are deemed to be "inconsistent with applicable law or otherwise impractical." Furthermore, taking specific exceptions furthers the Congressional intent of Federal reliance on voluntary consensus standards

because it allows the adoption of substantial portions of consensus standards without the need to reject the standards in their entirety because of limited provisions which are not acceptable to the agency.

In this rulemaking, the NRC is continuing its existing practice of establishing requirements for the design, construction, operation, ISI (examination) and IST of nuclear power plants by approving the use of the latest editions and addenda of the ASME Codes in 10 CFR 50.55a. The ASME Codes are voluntary consensus standards, developed by participants with broad and varied interests, in which all interested parties (including the NRC and licensees of nuclear power plants) participate. Therefore, the NRC's incorporation by reference of the ASME Codes is consistent with the overall objectives of the NTTAA and OMB Circular A-119.

As discussed in Section III of this statement of considerations, in this final rule the NRC is conditioning the use of certain provisions of the 2005 Addenda through 2008 Addenda of Section III, Division 1, and the 2005 Addenda through 2008 Addenda of Section XI, Division 1, of the ASME B&PV Code;

and the 2005 Addenda and 2006 Addenda of the ASME OM Code, and Code Cases N-722-1 and N-770-1. In addition, the final rule does not adopt ("excludes") certain provisions of the ASME Codes and this statement of considerations, and in the regulatory and backfit analysis for this rulemaking. The NRC believes that this final rule complies with the NTTAA and OMB Circular A-119 despite these conditions and "exclusions."

If the NRC did not conditionally accept ASME editions, addenda, and code cases, the NRC would disapprove these entirely. The effect would be that licensees and applicants would submit a larger number of requests for use of alternatives under § 50.55a(a)(3), requests for relief under § 50.55a(f) and (g), or requests for exemptions under 10 CFR 50.12 and/or 10 CFR 52.7. These requests would likely include broad-scope requests for approval to issue the full scope of the ASME Code editions and addenda which would otherwise be approved in this final rulemaking (*i.e.*, the request would not be simply for approval of a specific ASME Code provision with conditions). These requests would be an unnecessary additional burden for both the licensee

and the NRC, inasmuch as the NRC has already determined that the ASME Codes and Code Cases which are the subject of this final rulemaking are acceptable for use (in some cases with conditions). For these reasons, the NRC concludes that this final rule's treatment of ASME Code editions and addenda, and code cases and any conditions placed on them does not conflict with any policy on agency use of consensus standards specified in OMB Circular A 119.

The NRC did not identify any other voluntary consensus standards, developed by US voluntary consensus standards bodies for use within the US, which the NRC could incorporate by reference instead of the ASME Codes. The NRC also did not identify any voluntary consensus standards, developed by multinational voluntary consensus standards bodies for use on a multinational basis, which the NRC could incorporate by reference instead of the ASME Codes. The NRC identified codes addressing the same subject as the ASME Codes for use in individual countries. At least one country, Korea, directly translated the ASME Code for use in that country. In other countries (e.g., Japan), ASME Codes were the basis for development of the country's codes, but the ASME Codes were substantially modified to accommodate that country's regulatory system and reactor designs. Finally, there are countries (e.g., the Russian Federation) where that country's code was developed without regard to the ASME Code. However, some of these codes may not meet the definition of a voluntary consensus standard, because they were developed by the state rather than a voluntary consensus standards body. NRC evaluation of the countries codes to determine whether each code provides a comparable or enhanced level of safety when compared against the level of safety provided under the ASME Codes would require a significant expenditure of agency resources. This expenditure does not seem justified, given that substituting another country's code for the US voluntary consensus standard does not appear to substantially further the apparent underlying objectives of the NTTAA.

In summary, this final rulemaking satisfies the requirements of the Section 12(d)(3) of the NTTAA and Office of Management and Budget (OMB) Circular A 119.

VIII. Finding of No Significant Environmental Impact: Environmental Assessment

This final rule action is in accordance with the NRC's policy to incorporate by

reference in 10 CFR 50.55a new editions and addenda of the ASME B&PV and OM Codes to provide updated rules for constructing and inspecting components and testing pumps, valves, and dynamic restraints (snubbers) in light-water nuclear power plants. ASME Codes are national voluntary consensus standards and are required by the National Technology Transfer and Advancement Act of 1995, Public Law 104-113, to be used by government agencies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. The National Environmental Policy Act (NEPA) requires Federal government agencies to study the impacts of their "major Federal actions significantly affecting the quality of the human environment," and prepare detailed statements on the environmental impacts of the proposed action and alternatives to the proposed action (42 U.S.C. Sec. 4332(C); NEPA Sec. 102(C)).

The NRC has determined under NEPA, as amended, and the NRC's regulations in Subpart A of 10 CFR part 51, that this final rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The final rulemaking does not significantly increase the probability or consequences of accidents; no changes are being made in the types of effluents that may be released off-site; and there is no significant increase in public radiation exposure. The NRC estimates the radiological dose to plant personnel performing the inspections required by Code Case N-770-1 would be about 3 rem per plant over a 10-year interval, and a one-time exposure for mitigating welds of about 30 rem per plant. As required by 10 CFR part 20, and in accordance with current plant procedures and radiation protection programs, plant radiation protection staff will continue monitoring dose rates and would make adjustments in shielding, access requirements, decontamination methods, and procedures as necessary to minimize the dose to workers. The increased occupational dose to individual workers stemming from the Code Case N-770-1 inspections must be maintained within the limits of 10 CFR part 20 and as low as reasonably achievable. Therefore, the NRC concludes that the increase in occupational exposure would not be significant. The final rulemaking does not involve non-radiological plant effluents and has no other environmental impact. Therefore, no significant non-radiological impacts are

associated with this action. The determination of this final environmental assessment is that there will be no significant off-site impact to the public from this action.

IX. Paperwork Reduction Act Statement

This final rule decreases the overall burden on licensees by reducing the number of relief requests licensees would have to submit to the NRC under 10 CFR 50.55a(f)(5) and 10 CFR 50.55a(g)(5), but adds burden for 69 Pressurized Water Reactors (PWRs) to revise procedures and programs related to ASME Code Case N-770-1. The public burden reduction for these information collections is estimated to average -4 hours per response. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150-0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

X. Regulatory Analysis and Backfitting

The NRC prepared a document, "Regulatory Analysis and Backfit Considerations for Final Amendment 10 CFR 50.55a, "Codes and Standards"". The document provides the regulatory analysis for this final rule. It also addresses backfitting for the final rule and provides the basis for the NRC's determination that the final rule does not constitute "backfitting" as defined in 10 CFR 50.109(a)(4). The analysis is available for review as indicated in Section VI, "Availability of Documents," of this document.

XI. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this final rule does not impose a significant economical impact on a substantial number of small entities. This final rule affects only the licensing and operation of commercial nuclear power plants. A licensee who is a subsidiary of a large entity does not qualify as a small entity. The companies that own these plants are not "small entities" as defined in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810), as the companies:

- Provide services that are not engaged in manufacturing, and have average gross receipts of more than \$6.5 million over their last 3 completed fiscal years, and have more than 500 employees;

- Are not governments of a city, county, town, township or village;
- Are not school districts or special districts with populations of less than 50; and
- Are not small educational institutions.

XII. Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 194 (2005).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5841), Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190,

83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 2. In § 50.55a:

■ a. Revise paragraph (a), the introductory text of paragraphs (b) and (b)(1), paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv); and add paragraph (b)(1)(vii);

■ b. Revise paragraph (b)(2);

■ c. Revise the introductory text of paragraph (b)(3), paragraphs (b)(3)(v), (b)(3)(vi), (c)(3), (d)(2), (e)(2), (f)(2), (f)(3)(v), (f)(4), (f)(5)(iv), (g)(2), (g)(3), (g)(4), (g)(5)(iii), (g)(5)(iv), (g)(6)(ii)(B), (g)(6)(ii)(E)(1), (g)(6)(ii)(E)(2), and (g)(6)(ii)(E)(3);

■ d. Add paragraph (g)(6)(ii)(F); and

■ e. Revise footnote 1 to this section that appears after paragraph (h)(3).

The revisions and additions read as follows:

§ 50.55a Codes and standards.

* * * * *

(a) *Quality standards, ASME Codes and IEEE standards, and alternatives.*

(1) Structures, systems, and components must be designed, fabricated, erected, constructed, tested, and inspected to quality standards commensurate with the importance of the safety function to be performed.

(2) Systems and components of boiling and pressurized water-cooled nuclear power reactors must meet the requirements of the ASME Boiler and Pressure Vessel Code specified in paragraphs (b), (c), (d), (e), (f), and (g) of this section. Protection systems of nuclear power reactors of all types must meet the requirements specified in paragraph (h) of this section.

(3) Proposed alternatives to the requirements of paragraphs (c), (d), (e), (f), (g), and (h) of this section, or portions thereof, may be used when authorized by the Director, Office of Nuclear Reactor Regulation, or Director, Office of New Reactors, as appropriate. Any proposed alternatives must be submitted and authorized prior to implementation. The applicant or licensee shall demonstrate that:

(i) The proposed alternatives would provide an acceptable level of quality and safety; or

(ii) Compliance with the specified requirements of this section would result in hardship or unusual difficulty without a compensating increase in the level of quality and safety.

(b) *Standards approved for incorporation by reference.* Systems and components of boiling and pressurized water cooled nuclear power reactors must meet the requirements of the following standards referenced in paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this section: The ASME Boiler and Pressure Vessel Code, Section III, Division 1 (excluding Non-mandatory Appendices), and Section XI, Division 1; the ASME Code for Operation and Maintenance of Nuclear Power Plants; NRC Regulatory Guide (RG) 1.84, Revision 35, “Design, Fabrication, and Materials Code Case Acceptability, ASME Section III” (July 2010), RG 1.147, Revision 16, “Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1” (July 2010), and RG 1.192, “Operation and Maintenance Code Case Acceptability, ASME OM Code” (March 2003); and the following ASME Code Cases, approved with conditions by the NRC: N–722–1, “Additional Examinations for PWR Pressure Retaining Welds in Class 1 Components Fabricated with Alloy 600/82/182 Materials, Section XI, Division 1” (ASME Approval Date: January 26, 2009), in accordance with the requirements in paragraph (g)(6)(ii)(E) of this section; N–729–1, “Alternative Examination Requirements for PWR Reactor Vessel Upper Heads With Nozzles Having Pressure-Retaining Partial-Penetration Welds, Section XI, Division 1” (ASME Approval Date: March 28, 2006), in accordance with the requirements in paragraph (g)(6)(ii)(D) of this section; and N–770–1, “Alternative Examination Requirements and Acceptance Standards for Class 1 PWR Piping and Vessel Nozzle Butt Welds Fabricated with UNS N06082 or UNS W86182 Weld Filler Material With or Without Application of Listed Mitigation Activities, Section XI, Division 1,” (ASME Approval Date: December 25, 2009), in accordance with the requirements in paragraph (g)(6)(ii)(F) of this section. These standards have been approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ASME Boiler and Pressure Vessel Code, the ASME Code for Operation and Maintenance of Nuclear Power Plants, ASME Code Case N–722–1, ASME Code Case N–729–1, and ASME Code Case N–770–1 may be purchased from the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016, phone 800–843–2763, or through the Web <http://www.asme.org/Codes/>. Single copies of NRC Regulatory Guides 1.84,

Revision 35; 1.147, Revision 16; and 1.192 may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; or by fax to 301-415-2289; or by e-mail to DISTRIBUTION.RESOURCE@nrc.gov. Copies of the ASME Codes and NRC Regulatory Guides incorporated by reference in this section may be inspected at the NRC Technical Library, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852-2738 or call 301-415-5610, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(1) As used in this section, references to Section III refer to Section III of the ASME Boiler and Pressure Vessel Code, and include the 1963 Edition through 1973 Winter Addenda, and the 1974 Edition (Division 1) through the 2008 Addenda (Division 1), subject to the following conditions:

* * * * *

(ii) *Weld leg dimensions*. When applying the 1989 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(1) of this section, applicants or licensees may not apply subparagraphs NB-3683.4(c)(1) and NB-3683.4(c)(2) or Footnote 11 from the 1989 Addenda through the 2003 Addenda, or Footnote 13 from the 2004 Edition through the 2008 Addenda to Figures NC-3673.2(b)-1 and ND-3673.2(b)-1 for welds with leg size less than 1.09 t_n.

(iii) *Seismic design of piping*. Applicants or licensees may use Subarticles NB-3200, NB-3600, NC-3600, and ND-3600 for seismic design of piping, up to and including the 1993 Addenda, subject to the condition specified in paragraph (b)(1)(ii) of this section. Applicants or licensees may not use these subarticles for seismic design of piping in the 1994 Addenda through the 2005 Addenda incorporated by reference in paragraph (b)(1) of this section except that Subarticle NB-3200 in the 2004 Edition through the 2008 Addenda may be used by applicants and licensees subject to the condition in paragraph (b)(1)(iii)(B) of this section. Applicants or licensees may use Subarticles NB-3600, NC-3600 and ND-3600 for the seismic design of piping in the 2006 Addenda through the 2008 Addenda subject to the conditions of this paragraph corresponding to these subarticles.

(A) When applying Note (1) of Figure NB-3222-1 for Level B service limits, the calculation of P_b stresses must include reversing dynamic loads (including inertia earthquake effects) if evaluation of these loads is required by NB-3223(b).

(B) For Class 1 piping, the material and D_o/t requirements of NB-3656(b) shall be met for all Service Limits when the Service Limits include reversing dynamic loads, and the alternative rules for reversing dynamic loads are used.

(iv) *Quality assurance*. When applying editions and addenda later than the 1989 Edition of Section III, the requirements of NQA-1, "Quality Assurance Requirements for Nuclear Facilities," 1986 Edition through the 1994 Edition, are acceptable for use, provided that the edition and addenda of NQA-1 specified in NCA-4000 is used in conjunction with the administrative, quality, and technical provisions contained in the edition and addenda of Section III being used.

* * * * *

(vii) *Capacity certification and demonstration of function of incompressible-fluid pressure-relief valves*. When applying the 2006 Addenda through the 2007 Edition up to and including the 2008 Addenda, applicants and licensees may use paragraph NB-7742, except that paragraph NB-7742(a)(2) may not be used, and for a valve design of a single size to be certified over a range of set pressures, the demonstration of function tests under paragraph NB-7742 must be conducted as prescribed in NB-7732.2 on two valves covering the minimum set pressure for the design and the maximum set pressure which can be accommodated at the demonstration facility selected for the test.

(2) As used in this section, references to Section XI refer to Section XI, Division 1, of the ASME Boiler and Pressure Vessel Code, and include the 1970 Edition through the 1976 Winter Addenda, and the 1977 Edition through the 2007 Edition with the 2008 Addenda, subject to the following conditions:

(i) [Reserved]

(ii) *Pressure-retaining welds in ASME Code Class 1 piping (applies to Table IWB-2500 and IWB-2500-1 and Category B-J)*. If the facility's application for a construction permit was docketed prior to July 1, 1978, the extent of examination for Code Class 1 pipe welds may be determined by the requirements of Table IWB-2500 and Table IWB-2600 Category B-J of Section XI of the ASME B&PV Code in the 1974 Edition and addenda through the

Summer 1975 Addenda or other requirements the NRC may adopt.

(iii) [Reserved]

(iv) [Reserved]

(v) [Reserved]

(vi) *Effective edition and addenda of Subsection IWE and Subsection IWL, Section XI*. Applicants or licensees may use either the 1992 Edition with the 1992 Addenda or the 1995 Edition with the 1996 Addenda of Subsection IWE and Subsection IWL as conditioned by the requirements in paragraphs (b)(2)(viii) and (b)(2)(ix) of this section when implementing the initial 120-month inspection interval for the containment inservice inspection requirements of this section. Successive 120-month interval updates must be implemented in accordance with paragraph (g)(4)(ii) of this section.

(vii) *Section XI References to OM Part 4, OM Part 6 and OM Part 10 (Table IWA-1600-1)*. When using Table IWA-1600-1, "Referenced Standards and Specifications," in the Section XI, Division 1, 1987 Addenda, 1988 Addenda, or 1989 Edition, the specified "Revision Date or Indicator" for ASME/ANSI OM part 4, ASME/ANSI part 6, and ASME/ANSI part 10 must be the OMA-1988 Addenda to the OM-1987 Edition. These requirements have been incorporated into the OM Code which is incorporated by reference in paragraph (b)(3) of this section.

(viii) *Examination of concrete containments*. Applicants or licensees applying Subsection IWL, 1992 Edition with the 1992 Addenda, shall apply paragraphs (b)(2)(viii)(A) through (b)(2)(viii)(E) of this section. Applicants or licensees applying Subsection IWL, 1995 Edition with the 1996 Addenda, shall apply paragraphs (b)(2)(viii)(A), (b)(2)(viii)(D)(3), and (b)(2)(viii)(E) of this section. Applicants or licensees applying Subsection IWL, 1998 Edition through the 2000 Addenda shall apply paragraphs (b)(2)(viii)(E) and (b)(2)(viii)(F) of this section. Applicants or licensees applying Subsection IWL, 2001 Edition through the 2004 Edition, up to and including the 2006 Addenda, shall apply paragraphs (b)(2)(viii)(E) through (b)(2)(viii)(G) of this section. Applicants or licensees applying Subsection IWL, 2007 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, shall apply paragraph (b)(2)(viii)(E) of this section.

(A) Grease caps that are accessible must be visually examined to detect grease leakage or grease cap deformations. Grease caps must be removed for this examination when there is evidence of grease cap

deformation that indicates deterioration of anchorage hardware.

(B) When evaluation of consecutive surveillances of prestressing forces for the same tendon or tendons in a group indicates a trend of prestress loss such that the tendon force(s) would be less than the minimum design prestress requirements before the next inspection interval, an evaluation must be performed and reported in the Engineering Evaluation Report as prescribed in IWL-3300.

(C) When the elongation corresponding to a specific load (adjusted for effective wires or strands) during retensioning of tendons differs by more than 10 percent from that recorded during the last measurement, an evaluation must be performed to determine whether the difference is related to wire failures or slip of wires in anchorage. A difference of more than 10 percent must be identified in the ISI Summary Report required by IWA-6000.

(D) The applicant or licensee shall report the following conditions, if they occur, in the ISI Summary Report required by IWA-6000:

(1) The sampled sheathing filler grease contains chemically combined water exceeding 10 percent by weight or the presence of free water;

(2) The absolute difference between the amount removed and the amount replaced exceeds 10 percent of the tendon net duct volume;

(3) Grease leakage is detected during general visual examination of the containment surface.

(E) For Class CC applications, the applicant or licensee shall evaluate the acceptability of inaccessible areas when conditions exist in accessible areas that could indicate the presence of or result in degradation to such inaccessible areas. For each inaccessible area identified, the applicant or licensee shall provide the following in the ISI Summary Report required by IWA-6000:

(1) A description of the type and estimated extent of degradation, and the conditions that led to the degradation;

(2) An evaluation of each area, and the result of the evaluation, and;

(3) A description of necessary corrective actions.

(F) Personnel that examine containment concrete surfaces and tendon hardware, wires, or strands must meet the qualification provisions in IWA-2300. The "owner-defined" personnel qualification provisions in IWL-2310(d) are not approved for use.

(G) Corrosion protection material must be restored following concrete containment post-tensioning system

repair and replacement activities in accordance with the quality assurance program requirements specified in IWA-1400.

(ix) *Examination of metal containments and the liners of concrete containments.* Applicants or licensees applying Subsection IWE, 1992 Edition with the 1992 Addenda, or the 1995 Edition with the 1996 Addenda, shall satisfy the requirements of paragraphs (b)(2)(ix)(A) through (b)(2)(ix)(E) of this section. Applicants or licensees applying Subsection IWE, 1998 Edition through the 2001 Edition with the 2003 Addenda, shall satisfy the requirements of paragraphs (b)(2)(ix)(A), (b)(2)(ix)(B), and (b)(2)(ix)(F) through (b)(2)(ix)(I) of this section. Applicants or licensees applying Subsection IWE, 2004 Edition, up to and including the 2005 Addenda, shall satisfy the requirements of paragraphs (b)(2)(ix)(A), (b)(2)(ix)(B), and (b)(2)(ix)(F) through (b)(2)(ix)(H) of this section. Applicants or licensees applying Subsection IWE, 2004 Edition with the 2006 Addenda, shall satisfy the requirements of paragraphs (b)(2)(ix)(A)(2) and (b)(2)(ix)(B) of this section. Applicants or licensees applying Subsection IWE, 2007 Edition through the latest addenda incorporated by reference in paragraph (b)(2) of this section, shall satisfy the requirements of paragraphs (b)(2)(ix)(A)(2), (b)(2)(ix)(B) and (b)(2)(ix)(J) of this section.

(A) For Class MC applications, the following apply to inaccessible areas.

(1) The applicant or licensee shall evaluate the acceptability of inaccessible areas when conditions exist in accessible areas that could indicate the presence of or result in degradation to such inaccessible areas.

(2) For each inaccessible area identified for evaluation, the applicant or licensee shall provide the following in the ISI Summary Report as required by IWA-6000:

(i) A description of the type and estimated extent of degradation, and the conditions that led to the degradation;

(ii) An evaluation of each area, and the result of the evaluation, and;

(iii) A description of necessary corrective actions.

(B) When performing remotely the visual examinations required by Subsection IWE, the maximum direct examination distance specified in Table IWA-2210-1 may be extended and the minimum illumination requirements specified in Table IWA-2210-1 may be decreased provided that the conditions or indications for which the visual examination is performed can be detected at the chosen distance and illumination.

(C) The examinations specified in Examination Category E-B, Pressure Retaining Welds, and Examination Category E-F, Pressure Retaining Dissimilar Metal Welds, are optional.

(D) This paragraph (b)(2)(ix)(D) may be used as an alternative to the requirements of IWE-2430.

(1) If the examinations reveal flaws or areas of degradation exceeding the acceptance standards of Table IWE-3410-1, an evaluation must be performed to determine whether additional component examinations are required. For each flaw or area of degradation identified which exceeds acceptance standards, the applicant or licensee shall provide the following in the ISI Summary Report required by IWA-6000:

(i) A description of each flaw or area, including the extent of degradation, and the conditions that led to the degradation;

(ii) The acceptability of each flaw or area, and the need for additional examinations to verify that similar degradation does not exist in similar components, and;

(iii) A description of necessary corrective actions.

(2) The number and type of additional examinations to ensure detection of similar degradation in similar components.

(E) A general visual examination as required by Subsection IWE must be performed once each period.

(F) VT-1 and VT-3 examinations must be conducted in accordance with IWA-2200. Personnel conducting examinations in accordance with the VT-1 or VT-3 examination method shall be qualified in accordance with IWA-2300. The "owner-defined" personnel qualification provisions in IWE-2330(a) for personnel that conduct VT-1 and VT-3 examinations are not approved for use.

(G) The VT-3 examination method must be used to conduct the examinations in Items E1.12 and E1.20 of Table IWE-2500-1, and the VT-1 examination method must be used to conduct the examination in Item E4.11 of Table IWE-2500-1. An examination of the pressure-retaining bolted connections in Item E1.11 of Table IWE-2500-1 using the VT-3 examination method must be conducted once each interval. The "owner-defined" visual examination provisions in IWE-2310(a) are not approved for use for VT-1 and VT-3 examinations.

(H) Containment bolted connections that are disassembled during the scheduled performance of the examinations in Item E1.11 of Table IWE-2500-1 must be examined using

the VT-3 examination method. Flaws or degradation identified during the performance of a VT-3 examination must be examined in accordance with the VT-1 examination method. The criteria in the material specification or IWB-3517.1 must be used to evaluate containment bolting flaws or degradation. As an alternative to performing VT-3 examinations of containment bolted connections that are disassembled during the scheduled performance of Item E1.11, VT-3 examinations of containment bolted connections may be conducted whenever containment bolted connections are disassembled for any reason.

(I) The ultrasonic examination acceptance standard specified in IWE-3511.3 for Class MC pressure-retaining components must also be applied to metallic liners of Class CC pressure-retaining components.

(J) In general, a repair/replacement activity such as replacing a large containment penetration, cutting a large construction opening in the containment pressure boundary to replace steam generators, reactor vessel heads, pressurizers, or other major equipment; or other similar modification is considered a major containment modification. When applying IWE-5000 to Class MC pressure-retaining components, any major containment modification or repair/replacement, must be followed by a Type A test to provide assurance of both containment structural integrity and leaktight integrity prior to returning to service, in accordance with 10 CFR part 50, Appendix J, Option A or Option B on which the applicant's or licensee's Containment Leak-Rate Testing Program is based. When applying IWE-5000, if a Type A, B, or C Test is performed, the test pressure and acceptance standard for the test must be in accordance with 10 CFR part 50, Appendix J.

(x) *Quality assurance.* When applying Section XI editions and addenda later than the 1989 Edition, the requirements of NQA-1, "Quality Assurance Requirements for Nuclear Facilities," 1979 Addenda through the 1989 Edition, are acceptable as permitted by IWA-1400 of Section XI, if the licensee uses its 10 CFR part 50, Appendix B, quality assurance program, in conjunction with Section XI requirements. Commitments contained in the licensee's quality assurance program description that are more stringent than those contained in NQA-1 must govern Section XI activities. Further, where NQA-1 and Section XI do not address the commitments contained in the licensee's Appendix B

quality assurance program description, the commitments must be applied to Section XI activities.

(xi) [Reserved]

(xii) *Underwater welding.* The provisions in IWA-4660, "Underwater Welding," of Section XI, 1997 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, are not approved for use on irradiated material.

(xiii) [Reserved]

(xiv) *Appendix VIII personnel qualification.* All personnel qualified for performing ultrasonic examinations in accordance with Appendix VIII shall receive 8 hours of annual hands-on training on specimens that contain cracks. Licensees applying the 1999 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section may use the annual practice requirements in VII-4240 of Appendix VII of Section XI in place of the 8 hours of annual hands-on training provided that the supplemental practice is performed on material or welds that contain cracks, or by analyzing prerecorded data from material or welds that contain cracks. In either case, training must be completed no earlier than 6 months prior to performing ultrasonic examinations at a licensee's facility.

(xv) *Appendix VIII specimen set and qualification requirements.* Licensees using Appendix VIII in the 1995 Edition through the 2001 Edition of the ASME Boiler and Pressure Vessel Code may elect to comply with all of the provisions in paragraphs (b)(2)(xv)(A) through (b)(2)(xv)(M) of this section, except for paragraph (b)(2)(xv)(F) of this section, which may be used at the licensee's option. Licensees using editions and addenda after 2001 Edition through the 2006 Addenda shall use the 2001 Edition of Appendix VIII, and may elect to comply with all of the provisions in paragraphs (b)(2)(xv)(A) through (b)(2)(xv)(M) of this section, except for paragraph (b)(2)(xv)(F) of this section, which may be used at the licensee's option.

(A) When applying Supplements 2, 3, and 10 to Appendix VIII, the following examination coverage criteria requirements must be used:

(1) Piping must be examined in two axial directions, and when examination in the circumferential direction is required, the circumferential examination must be performed in two directions, provided access is available. Dissimilar metal welds must be examined axially and circumferentially.

(2) Where examination from both sides is not possible, full coverage credit may be claimed from a single side for

ferritic welds. Where examination from both sides is not possible on austenitic welds or dissimilar metal welds, full coverage credit from a single side may be claimed only after completing a successful single-sided Appendix VIII demonstration using flaws on the opposite side of the weld. Dissimilar metal weld qualifications must be demonstrated from the austenitic side of the weld, and the qualification may be expanded for austenitic welds with no austenitic sides using a separate add-on performance demonstration. Dissimilar metal welds may be examined from either side of the weld.

(B) The following conditions must be used in addition to the requirements of Supplement 4 to Appendix VIII:

(1) Paragraph 3.1, Detection acceptance criteria—Personnel are qualified for detection if the results of the performance demonstration satisfy the detection requirements of ASME Section XI, Appendix VIII, Table VIII-S4-1 and no flaw greater than 0.25 inch through wall dimension is missed.

(2) Paragraph 1.1(c), Detection test matrix—Flaws smaller than the 50 percent of allowable flaw size, as defined in IWB-3500, need not be included as detection flaws. For procedures applied from the inside surface, use the minimum thickness specified in the scope of the procedure to calculate a/t. For procedures applied from the outside surface, the actual thickness of the test specimen is to be used to calculate a/t.

(C) When applying Supplement 4 to Appendix VIII, the following conditions must be used:

(1) A depth sizing requirement of 0.15 inch RMS must be used in lieu of the requirements in Subparagraphs 3.2(a) and 3.2(c), and a length sizing requirement of 0.75 inch RMS must be used in lieu of the requirement in Subparagraph 3.2(b).

(2) In lieu of the location acceptance criteria requirements of Subparagraph 2.1(b), a flaw will be considered detected when reported within 1.0 inch or 10 percent of the metal path to the flaw, whichever is greater, of its true location in the X and Y directions.

(3) In lieu of the flaw type requirements of Subparagraph 1.1(e)(1), a minimum of 70 percent of the flaws in the detection and sizing tests shall be cracks. Notches, if used, must be limited by the following:

(i) Notches must be limited to the case where examinations are performed from the clad surface.

(ii) Notches must be semielliptical with a tip width of less than or equal to 0.010 inches.

(iii) Notches must be perpendicular to the surface within ± 2 degrees.

(4) In lieu of the detection test matrix requirements in paragraphs 1.1(e)(2) and 1.1(e)(3), personnel demonstration test sets must contain a representative distribution of flaw orientations, sizes, and locations.

(D) The following conditions must be used in addition to the requirements of Supplement 6 to Appendix VIII:

(1) Paragraph 3.1, Detection Acceptance Criteria—Personnel are qualified for detection if:

(i) No surface connected flaw greater than 0.25 inch through wall has been missed.

(ii) No embedded flaw greater than 0.50 inch through wall has been missed.

(2) Paragraph 3.1, Detection Acceptance Criteria—For procedure qualification, all flaws within the scope of the procedure are detected.

(3) Paragraph 1.1(b) for detection and sizing test flaws and locations—Flaws smaller than the 50 percent of allowable flaw size, as defined in IWB-3500, need not be included as detection flaws.

Flaws which are less than the allowable flaw size, as defined in IWB-3500, may be used as detection and sizing flaws.

(4) Notches are not permitted.

(E) When applying Supplement 6 to Appendix VIII, the following conditions must be used:

(1) A depth sizing requirement of 0.25 inch RMS must be used in lieu of the requirements of subparagraphs 3.2(a), 3.2(c)(2), and 3.2(c)(3).

(2) In lieu of the location acceptance criteria requirements in Subparagraph 2.1(b), a flaw will be considered detected when reported within 1.0 inch or 10 percent of the metal path to the flaw, whichever is greater, of its true location in the X and Y directions.

(3) In lieu of the length sizing criteria requirements of Subparagraph 3.2(b), a length sizing acceptance criteria of 0.75 inch RMS must be used.

(4) In lieu of the detection specimen requirements in Subparagraph 1.1(e)(1), a minimum of 55 percent of the flaws must be cracks. The remaining flaws may be cracks or fabrication type flaws, such as slag and lack of fusion. The use of notches is not allowed.

(5) In lieu of paragraphs 1.1(e)(2) and 1.1(e)(3) detection test matrix, personnel demonstration test sets must contain a representative distribution of flaw orientations, sizes, and locations.

(F) The following conditions may be used for personnel qualification for combined Supplement 4 to Appendix VIII and Supplement 6 to Appendix VIII qualification. Licensees choosing to apply this combined qualification shall apply all of the provisions of

Supplements 4 and 6 including the following conditions:

(1) For detection and sizing, the total number of flaws must be at least 10. A minimum of 5 flaws shall be from Supplement 4, and a minimum of 50 percent of the flaws must be from Supplement 6. At least 50 percent of the flaws in any sizing must be cracks. Notches are not acceptable for Supplement 6.

(2) Examination personnel are qualified for detection and length sizing when the results of any combined performance demonstration satisfy the acceptance criteria of Supplement 4 to Appendix VIII.

(3) Examination personnel are qualified for depth sizing when Supplement 4 to Appendix VIII and Supplement 6 to Appendix VIII flaws are sized within the respective acceptance criteria of those supplements.

(G) When applying Supplement 4 to Appendix VIII, Supplement 6 to Appendix VIII, or combined Supplement 4 and Supplement 6 qualification, the following additional conditions must be used, and examination coverage must include:

(1) The clad to base metal interface, including a minimum of 15 percent T (measured from the clad to base metal interface), must be examined from four orthogonal directions using procedures and personnel qualified in accordance with Supplement 4 to Appendix VIII.

(2) If the clad-to-base-metal-interface procedure demonstrates detectability of flaws with a tilt angle relative to the weld centerline of at least 45 degrees, the remainder of the examination volume is considered fully examined if coverage is obtained in one parallel and one perpendicular direction. This must be accomplished using a procedure and personnel qualified for single-side examination in accordance with Supplement 6. Subsequent examinations of this volume may be performed using examination techniques qualified for a tilt angle of at least 10 degrees.

(3) The examination volume not addressed by paragraph (b)(2)(xv)(G)(1) of this section is considered fully examined if coverage is obtained in one parallel and one perpendicular direction, using a procedure and personnel qualified for single sided examination when the conditions in paragraph (b)(2)(xv)(G)(2) are met.

(H) When applying Supplement 5 to Appendix VIII, at least 50 percent of the flaws in the demonstration test set must be cracks and the maximum mis-orientation must be demonstrated with cracks. Flaws in nozzles with bore

diameters equal to or less than 4 inches may be notches.

(I) When applying Supplement 5, Paragraph (a), to Appendix VIII, the number of false calls allowed must be $D/10$, with a maximum of 3, where D is the diameter of the nozzle.

(J) [Reserved]

(K) When performing nozzle-to-vessel weld examinations, the following conditions must be used when the requirements contained in Supplement 7 to Appendix VIII are applied for nozzle-to-vessel welds in conjunction with Supplement 4 to Appendix VIII, Supplement 6 to Appendix VIII, or combined Supplement 4 and Supplement 6 qualification.

(1) For examination of nozzle-to-vessel welds conducted from the bore, the following conditions are required to qualify the procedures, equipment, and personnel:

(i) For detection, a minimum of four flaws in one or more full-scale nozzle mock-ups must be added to the test set. The specimens must comply with Supplement 6, paragraph 1.1, to Appendix VIII, except for flaw locations specified in Table VIII S6-1. Flaws may be notches, fabrication flaws or cracks. Seventy-five (75) percent of the flaws must be cracks or fabrication flaws. Flaw locations and orientations must be selected from the choices shown in paragraph (b)(2)(xi)(K)(4) of this section, Table VIII-S7-1—Modified, with the exception that flaws in the outer eighty-five (85) percent of the weld need not be perpendicular to the weld. There may be no more than two flaws from each category, and at least one subsurface flaw must be included.

(ii) For length sizing, a minimum of four flaws as in paragraph (b)(2)(xv)(K)(1)(i) of this section must be included in the test set. The length sizing results must be added to the results of combined Supplement 4 to Appendix VIII and Supplement 6 to Appendix VIII. The combined results must meet the acceptance standards contained in paragraph (b)(2)(xv)(E)(3) of this section.

(iii) For depth sizing, a minimum of four flaws as in paragraph (b)(2)(xv)(K)(1)(i) of this section must be included in the test set. Their depths must be distributed over the ranges of Supplement 4, Paragraph 1.1, to Appendix VIII, for the inner 15 percent of the wall thickness and Supplement 6, Paragraph 1.1, to Appendix VIII, for the remainder of the wall thickness. The depth sizing results must be combined with the sizing results from Supplement 4 to Appendix VIII for the inner 15 percent and to Supplement 6 to Appendix VIII for the remainder of the

wall thickness. The combined results must meet the depth sizing acceptance criteria contained in paragraphs (b)(2)(xv)(C)(1), (b)(2)(xv)(E)(1), and (b)(2)(xv)(F)(3) of this section.

(2) For examination of reactor pressure vessel nozzle-to-vessel welds conducted from the inside of the vessel,

(i) The clad to base metal interface and the adjacent examination volume to a minimum depth of 15 percent T (measured from the clad to base metal interface) must be examined from four orthogonal directions using a procedure and personnel qualified in accordance with Supplement 4 to Appendix VIII as conditioned by paragraphs (b)(2)(xv)(B) and (b)(2)(xv)(C) of this section.

(ii) When the examination volume defined in paragraph (b)(2)(xi)(K)(2)(i) of this section cannot be effectively examined in all four directions, the examination must be augmented by examination from the nozzle bore using a procedure and personnel qualified in

accordance with paragraph (b)(2)(xi)(K)(1) of this section.

(iii) The remainder of the examination volume not covered by paragraph (b)(2)(xv)(K)(2)(ii) of this section or a combination of paragraphs (b)(2)(xv)(K)(2)(i) and (b)(2)(xv)(K)(2)(ii) of this section, must be examined from the nozzle bore using a procedure and personnel qualified in accordance with paragraph (b)(2)(xv)(K)(1) of this section, or from the vessel shell using a procedure and personnel qualified for single sided examination in accordance with Supplement 6 to Appendix VIII, as conditioned by paragraphs (b)(2)(xv)(D) through (b)(2)(xv)(G) of this section.

(3) For examination of reactor pressure vessel nozzle-to-shell welds conducted from the outside of the vessel,

(i) The clad to base metal interface and the adjacent metal to a depth of 15 percent T, (measured from the clad to base metal interface) must be examined from one radial and two opposing

circumferential directions using a procedure and personnel qualified in accordance with Supplement 4 to Appendix VIII, as conditioned by paragraphs (b)(2)(xv)(B) and (b)(2)(xv)(C) of this section, for examinations performed in the radial direction, and Supplement 5 to Appendix VIII, as conditioned by paragraph (b)(2)(xv)(J) of this section, for examinations performed in the circumferential direction.

(ii) The examination volume not addressed by paragraph (b)(2)(xv)(K)(3)(i) of this section must be examined in a minimum of one radial direction using a procedure and personnel qualified for single sided examination in accordance with Supplement 6 to Appendix VIII, as conditioned by paragraphs (b)(2)(xv)(D) through (b)(2)(xv)(G) of this section.

(4) Table VIII–S7–1, “Flaw Locations and Orientations,” Supplement 7 to Appendix VIII, is conditioned as follows:

TABLE VIII–S7–1—MODIFIED

Flaw locations and orientations		
	Parallel to weld	Perpendicular to weld
Inner 15 percent	X	X
OD Surface	X	.....
Subsurface	X	.....

(L) As a condition to the requirements of Supplement 8, Subparagraph 1.1(c), to Appendix VIII, notches may be located within one diameter of each end of the bolt or stud.

(M) When implementing Supplement 12 to Appendix VIII, only the provisions related to the coordinated implementation of Supplement 3 to Supplement 2 performance demonstrations are to be applied.

(xvi) *Appendix VIII single side ferritic vessel and piping and stainless steel piping examination.* When applying editions and addenda prior to the 2007 Edition of Section XI, the following conditions apply.

(A) Examinations performed from one side of a ferritic vessel weld must be conducted with equipment, procedures, and personnel that have demonstrated proficiency with single side examinations. To demonstrate equivalency to two sided examinations, the demonstration must be performed to the requirements of Appendix VIII as conditioned by this paragraph and paragraphs (b)(2)(xv)(B) through (b)(2)(xv)(G) of this section, on specimens containing flaws with non-

optimum sound energy reflecting characteristics or flaws similar to those in the vessel being examined.

(B) Examinations performed from one side of a ferritic or stainless steel pipe weld must be conducted with equipment, procedures, and personnel that have demonstrated proficiency with single side examinations. To demonstrate equivalency to two sided examinations, the demonstration must be performed to the requirements of Appendix VIII as conditioned by this paragraph and paragraph (b)(2)(xv)(A) of this section.

(xvii) *Reconciliation of quality requirements.* When purchasing replacement items, in addition to the reconciliation provisions of IWA–4200, 1995 Addenda through 1998 Edition, the replacement items must be purchased, to the extent necessary, in accordance with the licensee’s quality assurance program description required by 10 CFR 50.34(b)(6)(ii).

(xviii) *Certification of NDE personnel.* (A) Level I and II nondestructive examination personnel shall be recertified on a 3-year interval in lieu of the 5-year interval specified in the 1997

Addenda and 1998 Edition of IWA–2314, and IWA–2314(a) and IWA–2314(b) of the 1999 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section.

(B) When applying editions and addenda prior to the 2007 Edition of Section XI, paragraph IWA–2316 may only be used to qualify personnel that observe leakage during system leakage and hydrostatic tests conducted in accordance with IWA 5211(a) and (b).

(C) When applying editions and addenda prior to the 2005 Addenda of Section XI, licensee’s qualifying visual examination personnel for VT–3 visual examination under paragraph IWA–2317 of Section XI, must demonstrate the proficiency of the training by administering an initial qualification examination and administering subsequent examinations on a 3-year interval.

(xix) *Substitution of alternative methods.* The provisions for substituting alternative examination methods, a combination of methods, or newly developed techniques in the 1997 Addenda of IWA–2240 must be applied

when using the 1998 Edition through the 2004 Edition of Section XI of the ASME B&PV Code. The provisions in IWA-4520(c), 1997 Addenda through the 2004 Edition, allowing the substitution of alternative methods, a combination of methods, or newly developed techniques for the methods specified in the Construction Code are not approved for use. The provisions in IWA-4520(b)(2) and IWA-4521 of the 2008 Addenda through the latest edition and addenda approved in paragraph (b)(2) of this section, allowing the substitution of ultrasonic examination for radiographic examination specified in the Construction Code are not approved for use.

(xx) *System leakage tests.*

(A) When performing system leakage tests in accordance with IWA-5213(a), 1997 through 2002 Addenda, the licensee shall maintain a 10-minute hold time after test pressure has been reached for Class 2 and Class 3 components that are not in use during normal operating conditions. No hold time is required for the remaining Class 2 and Class 3 components provided that the system has been in operation for at least 4 hours for insulated components or 10 minutes for uninsulated components.

(B) The NDE provision in IWA-4540(a)(2) of the 2002 Addenda of Section XI must be applied when performing system leakage tests after repair and replacement activities performed by welding or brazing on a pressure retaining boundary using the 2003 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section.

(xxi) *Table IWB-2500-1 examination requirements.*

(A) The provisions of Table IWB-2500-1, Examination Category B-D, Full Penetration Welded Nozzles in Vessels, Items B3.40 and B3.60 (Inspection Program A) and Items B3.120 and B3.140 (Inspection Program B) of the 1998 Edition must be applied when using the 1999 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section. A visual examination with magnification that has a resolution sensitivity to detect a 1-mil width wire or crack, utilizing the allowable flaw length criteria in Table IWB-3512-1, 1997 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, with a limiting assumption on the flaw aspect ratio (*i.e.*, $a/l = 0.5$), may be performed instead of an ultrasonic examination.

(B) [Reserved]

(xxii) *Surface examination.* The use of the provision in IWA-2220, "Surface

Examination," of Section XI, 2001 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, that allow use of an ultrasonic examination method is prohibited.

(xxiii) *Evaluation of thermally cut surfaces.* The use of the provisions for eliminating mechanical processing of thermally cut surfaces in IWA-4461.4.2 of Section XI, 2001 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section are prohibited.

(xxiv) *Incorporation of the performance demonstration initiative and addition of ultrasonic examination criteria.* The use of Appendix VIII and the supplements to Appendix VIII and Article I-3000 of Section XI of the ASME B&PV Code, 2002 Addenda through the 2006 Addenda is prohibited.

(xxv) *Mitigation of defects by modification.* The use of the provisions in IWA-4340, "Mitigation of Defects by Modification," Section XI, 2001 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section are prohibited.

(xxvi) *Pressure testing Class 1, 2, and 3 mechanical joints.* The repair and replacement activity provisions in IWA-4540(c) of the 1998 Edition of Section XI for pressure testing Class 1, 2, and 3 mechanical joints must be applied when using the 2001 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section.

(xxvii) *Removal of insulation.* When performing visual examination in accordance with IWA-5242 of Section XI of the ASME B&PV Code, 2003 Addenda through the 2006 Addenda, or IWA-5241 of the 2007 Edition through the latest edition and addenda incorporated in paragraph (b)(2) of this section, insulation must be removed from 17-4 PH or 410 stainless steel studs or bolts aged at a temperature below 1100 °F or having a Rockwell Method C hardness value above 30, and from A-286 stainless steel studs or bolts preloaded to 100,000 pounds per square inch or higher.

(xxviii) *Analysis of flaws.* Licensees using ASME B&PV Code, Section XI, Appendix A shall use the following conditions when implementing Equation (2) in A-4300(b)(1):

For $R < 0$, ΔK_I depends on the crack depth (a), and the flow stress (σ_f). The flow stress is defined by $\sigma_f = \frac{1}{2}(\sigma_{ys} + \sigma_{ult})$, where σ_{ys} is the yield strength and σ_{ult} is the ultimate tensile strength in units ksi (MPa) and a is in units in. (mm). For $-2 \leq R \leq 0$ and $K_{max} - K_{min} \leq 0.8 \times 1.12 \sigma_f \sqrt{(\pi a)}$, $S = 1$ and $\Delta K_I =$

K_{max} . For $R < -2$ and $K_{max} - K_{min} \leq 0.8 \times 1.12 \sigma_f \sqrt{(\pi a)}$, $S = 1$ and $\Delta K_I = (1 - R) K_{max}/3$. For $R < 0$ and $K_{max} - K_{min} > 0.8 \times 1.12 \sigma_f \sqrt{(\pi a)}$, $S = 1$ and $\Delta K_I = K_{max} - K_{min}$.

(xxix) *Nonmandatory Appendix R.* Nonmandatory Appendix R, "Risk-Informed Inspection Requirements for Piping," of Section XI, 2005 Addenda through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, may not be implemented without prior NRC authorization of the proposed alternative in accordance with paragraph (a)(3)(i) of this section.

(3) As used in this section, references to the OM Code refer to the ASME Code for Operation and Maintenance of Nuclear Power Plants, Subsections ISTA, ISTB, ISTD, and ISTD, Mandatory Appendices I and II, and Nonmandatory Appendices A through H and J, and include the 1995 Edition through the 2006 Addenda subject to the following conditions:

* * * * *

(v) *Subsection ISTD.* Article IWF-5000, "Inservice Inspection Requirements for Snubbers," of the ASME B&PV Code, Section XI, must be used when performing inservice inspection examinations and tests of snubbers at nuclear power plants, except as conditioned in paragraphs (b)(3)(v)(A) and (b)(3)(v)(B) of this section.

(A) Licensees may use Subsection ISTD, "Preservice and Inservice Examination and Testing of Dynamic Restraints (Snubbers) in Light-Water Reactor Power Plants," ASME OM Code, 1995 Edition through the latest edition and addenda incorporated by reference in paragraph (b)(2) of this section, in place of the requirements for snubbers in the editions and addenda up to the 2005 Addenda of the ASME B&PV Code, Section XI, IWF-5200(a) and (b) and IWF-5300(a) and (b), by making appropriate changes to their technical specifications or licensee-controlled documents. Preservice and inservice examinations must be performed using the VT-3 visual examination method described in IWA-2213.

(B) Licensees shall comply with the provisions for examining and testing snubbers in Subsection ISTD of the ASME OM Code and make appropriate changes to their technical specifications or licensee-controlled documents when using the 2006 Addenda and later editions and addenda of Section XI of the ASME B&PV Code.

(vi) *Exercise interval for manual valves.* Manual valves must be exercised on a 2-year interval rather than the 5-

year interval specified in paragraph ISTC-3540 of the 1999 through the 2005 Addenda of the ASME OM Code, provided that adverse conditions do not require more frequent testing.

* * * * *

(c) * * *

(3) The Code edition, addenda, and optional ASME Code cases to be applied to components of the reactor coolant pressure boundary must be determined by the provisions of paragraph NCA-1140, Subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, subject to the following conditions:

(i) The edition and addenda applied to a component must be those which are incorporated by reference in paragraph (b)(1) of this section;

(ii) The ASME Code provisions applied to the pressure vessel may be dated no earlier than the Summer 1972 Addenda of the 1971 edition;

(iii) The ASME Code provisions applied to piping, pumps, and valves may be dated no earlier than the Winter 1972 Addenda of the 1971 edition; and

(iv) The optional Code cases applied to a component must be those listed in NRC Regulatory Guide 1.84 that is incorporated by reference in paragraph (b) of this section.

* * * * *

(d) * * *

(2) The Code edition, addenda, and optional ASME Code cases to be applied to the systems and components identified in paragraph (d)(1) of this section must be determined by the rules of paragraph NCA-1140, Subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, subject to the following conditions:

(i) The edition and addenda must be those which are incorporated by reference in paragraph (b)(1) of this section;

(ii) The ASME Code provisions applied to the systems and components may be dated no earlier than the 1980 Edition; and

(iii) The optional Code cases must be those listed in the NRC Regulatory Guide 1.84 that is incorporated by reference in paragraph (b) of this section.

(e) * * *

(2) The Code edition, addenda, and optional ASME Code cases to be applied to the systems and components identified in paragraph (e)(1) of this section must be determined by the rules of paragraph NCA-1140, subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, subject to the following conditions:

(i) The edition and addenda must be those which are incorporated by

reference in paragraph (b)(1) of this section;

(ii) The ASME Code provisions applied to the systems and components may be dated no earlier than the 1980 Edition; and

(iii) The optional Code cases must be those listed in NRC Regulatory Guide 1.84 that is incorporated by reference in paragraph (b) of this section.

(f) * * *

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, pumps and valves which are classified as ASME Code Class 1 and Class 2 must be designed and provided with access to enable the performance of inservice tests for operational readiness set forth in editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16, or Regulatory Guide 1.192 that are incorporated by reference in paragraph (b) of this section) in effect 6 months before the date of issuance of the construction permit. The pumps and valves may meet the inservice test requirements set forth in subsequent editions of this Code and addenda which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in NRC Regulatory Guide 1.147, Revision 16, or Regulatory Guide 1.192 that are incorporated by reference in paragraph (b) of this section), subject to the applicable conditions listed therein.

(3) * * *

(v) All pumps and valves may meet the test requirements set forth in subsequent editions of codes and addenda or portions thereof which are incorporated by reference in paragraph (b) of this section, subject to the conditions listed in paragraph (b) of this section.

(4) Throughout the service life of a boiling or pressurized water-cooled nuclear power facility, pumps and valves which are classified as ASME Code Class 1, Class 2, and Class 3 must meet the inservice test requirements, except design and access provisions, set forth in the ASME OM Code and addenda that become effective subsequent to editions and addenda specified in paragraphs (f)(2) and (f)(3) of this section and that are incorporated by reference in paragraph (b) of this section, to the extent practical within the limitations of design, geometry and materials of construction of the components.

(i) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during the initial 120-month interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months before the date of issuance of the operating license under this part, or 12 months before the date scheduled for initial loading fuel under a combined license under part 52 of this chapter (or the optional ASME Code cases listed in NRC Regulatory Guide 1.192, that is incorporated by reference in paragraph (b) of this section), subject to the conditions listed in paragraph (b) of this section.

(ii) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during successive 120-month intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months before the start of the 120-month interval (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16, or Regulatory Guide 1.192 that are incorporated by reference in paragraph (b) of this section), subject to the conditions listed in paragraph (b) of this section.

(iii) [Reserved]

(iv) Inservice tests of pumps and valves may meet the requirements set forth in subsequent editions and addenda that are incorporated by reference in paragraph (b) of this section, subject to the conditions listed in paragraph (b) of this section, and subject to NRC approval. Portions of editions or addenda may be used provided that all related requirements of the respective editions or addenda are met.

(5) * * *

(iv) Where a pump or valve test requirement by the code or addenda is determined to be impractical by the licensee and is not included in the revised inservice test program as permitted by paragraph (f)(4) of this section, the basis for this determination must be submitted for NRC review and approval not later than 12 months after the expiration of the initial 120-month interval of operation from start of facility commercial operation and each subsequent 120-month interval of operation during which the test is determined to be impractical.

* * * * *

(g) * * *

(2) For a boiling or pressurized water-cooled nuclear power facility whose

construction permit was issued on or after January 1, 1971, but before July 1, 1974, components (including supports) which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice examination of such components (including supports) and must meet the preservice examination requirements set forth in editions and addenda of Section III or Section XI of the ASME B&PV Code (or ASME OM Code for snubber examination and testing) incorporated by reference in paragraph (b) of this section (or the optional ASME code cases listed in NRC Regulatory Guide 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section) in effect six months before the date of issuance of the construction permit. The components (including supports) may meet the requirements set forth in subsequent editions and addenda of this Code which are incorporated by reference in paragraph (b) of this section (or the optional ASME code cases listed in NRC Regulatory Guide 1.147, Revision 16, when using Section XI, or Regulatory Guide 1.192 when using the OM Code, that are incorporated by reference in paragraph (b) of this section), subject to the applicable conditions.

(3) For a boiling or pressurized water-cooled nuclear power facility whose construction permit under this part, or design certification, design approval, combined license, or manufacturing license under part 52 of this chapter, was issued on or after July 1, 1974:

(i) Components (including supports) which are classified as ASME Code Class 1 must be designed and provided with access to enable the performance of inservice examination of these components and must meet the preservice examination requirements set forth in the editions and addenda of Section III or Section XI of the ASME B&PV Code (or ASME OM Code for snubber examination and testing) incorporated by reference in paragraph (b) of this section (or the optional ASME code cases listed in NRC Regulatory Guide 1.147, Revision 16, when using Section XI, or Regulatory Guide 1.192 when using the OM Code, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular component.

(ii) Components which are classified as ASME Code Class 2 and Class 3 and supports for components which are classified as ASME Code Class 1, Class 2, and Class 3 must be designed and be provided with access to enable the performance of inservice examination of

these components and must meet the preservice examination requirements set forth in the editions and addenda of Section III or Section XI of the ASME B&PV Code (or ASME OM Code for snubber examination and testing) incorporated by reference in paragraph (b) of this section (or the optional ASME code cases listed in NRC Regulatory Guide 1.147, Revision 16, when using Section XI; or Regulatory Guide 1.192 when using the OM Code, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular component.

(iii)–(iv) [Reserved]

(v) All components (including supports) may meet the requirements set forth in subsequent editions of codes and addenda or portions thereof which are incorporated by reference in paragraph (b) of this section, subject to the conditions listed therein.

(4) Throughout the service life of a boiling or pressurized water-cooled nuclear power facility, components (including supports) which are classified as ASME Code Class 1, Class 2, and Class 3 must meet the requirements, except design and access provisions and preservice examination requirements, set forth in Section XI of editions and addenda of the ASME B&PV Code (or ASME OM Code for snubber examination and testing) that become effective subsequent to editions specified in paragraphs (g)(2) and (g)(3) of this section and that are incorporated by reference in paragraph (b) of this section, to the extent practical within the limitations of design, geometry and materials of construction of the components. Components which are classified as Class MC pressure retaining components and their integral attachments, and components which are classified as Class CC pressure retaining components and their integral attachments must meet the requirements, except design and access provisions and preservice examination requirements, set forth in Section XI of the ASME B&PV Code and addenda that are incorporated by reference in paragraph (b) of this section, subject to the condition listed in paragraph (b)(2)(vi) of this section and the conditions listed in paragraphs (b)(2)(viii) and (b)(2)(ix) of this section, to the extent practical within the limitation of design, geometry and materials of construction of the components.

(i) Inservice examinations of components and system pressure tests conducted during the initial 120-month inspection interval must comply with the requirements in the latest edition

and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months before the date of issuance of the operating license under this part, or 12 months before the date scheduled for initial loading of fuel under a combined license under part 52 of this chapter (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, through Revision 16, when using Section XI; or Regulatory Guide 1.192 when using the OM Code, that are incorporated by reference in paragraph (b) of this section), subject to the conditions listed in paragraph (b) of this section.

(ii) Inservice examination of components and system pressure tests conducted during successive 120-month inspection intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months before the start of the 120-month inspection interval (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section), subject to the conditions listed in paragraph (b) of this section. However, a licensee whose inservice inspection interval commences during the 12 through 18-month period after July 21, 2011 may delay the update of their Appendix VIII program by up to 18 months after July 21, 2011.

(iii) When applying editions and addenda prior to the 2003 Addenda of Section XI of the ASME B&PV Code licensees may, but are not required to, perform the surface examinations of high-pressure safety injection systems specified in Table IWB-2500-1, Examination Category B–J, Item Numbers B9.20, B9.21 and B9.22.

(iv) Inservice examination of components and system pressure tests may meet the requirements set forth in subsequent editions and addenda that are incorporated by reference in paragraph (b) of this section, subject to the conditions listed in paragraph (b) of this section, and subject to Commission approval. Portions of editions or addenda may be used provided that all related requirements of the respective editions or addenda are met.

(v) For a boiling or pressurized water-cooled nuclear power facility whose construction permit under this part or combined license under part 52 of this chapter was issued after January 1, 1956:

(A) Metal containment pressure retaining components and their integral attachments must meet the inservice inspection, repair, and replacement requirements applicable to components

which are classified as ASME Code Class MC;

(B) Metallic shell and penetration liners which are pressure retaining components and their integral attachments in concrete containments must meet the inservice inspection, repair, and replacement requirements applicable to components which are classified as ASME Code Class MC; and

(C) Concrete containment pressure retaining components and their integral attachments, and the post-tensioning systems of concrete containments must meet the inservice inspections, repair, and replacement requirements applicable to components which are classified as ASME Code Class CC.

(5) * * *

(iii) If the licensee has determined that conformance with a code requirement is impractical for its facility, the licensee shall notify the NRC and submit, as specified in § 50.4, information to support the determinations. Determinations of impracticality in accordance with this section must be based on the demonstrated limitations experienced when attempting to comply with the code requirements during the inservice inspection interval for which the request is being submitted. Requests for relief made in accordance with this section must be submitted to the NRC no later than 12 months after the expiration of the initial or subsequent 120-month inspection interval for which relief is sought.

(iv) Where the licensee determines that an examination required by Code edition or addenda is impractical, the basis for this determination must be submitted for NRC review and approval not later than 12 months after the expiration of the initial or subsequent 120-month inspection interval for which relief is sought.

(6) * * *

(ii) * * *

(B) Licensees do not have to submit to the NRC for approval of their containment inservice inspection programs which were developed to satisfy the requirements of Subsection IWE and Subsection IWL with specified conditions. The program elements and the required documentation must be maintained on site for audit.

* * * * *

(E) * * *

(1) All licensees of pressurized water reactors shall augment their inservice inspection program by implementing ASME Code Case N-722-1 subject to the conditions specified in paragraphs (g)(6)(ii)(E)(2) through (g)(6)(ii)(E)(4) of this section. The inspection

requirements of ASME Code Case N-722-1 do not apply to components with pressure retaining welds fabricated with Alloy 600/82/182 materials that have been mitigated by weld overlay or stress improvement.

(2) If a visual examination determines that leakage is occurring from a specific item listed in Table 1 of ASME Code Case N-722-1 that is not exempted by the ASME Code, Section XI, IWB-1220(b)(1), additional actions must be performed to characterize the location, orientation, and length of crack(s) in Alloy 600 nozzle wrought material and location, orientation, and length of crack(s) in Alloy 82/182 butt welds. Alternatively, licensees may replace the Alloy 600/82/182 materials in all the components under the item number of the leaking component.

(3) If the actions in paragraph (g)(6)(ii)(E)(2) of this section determine that a flaw is circumferentially oriented and potentially a result of primary water stress corrosion cracking, licensees shall perform non-visual NDE inspections of components that fall under that ASME Code Case N-722-1 item number. The number of components inspected must equal or exceed the number of components found to be leaking under that item number. If circumferential cracking is identified in the sample, non-visual NDE must be performed in the remaining components under that item number.

* * * * *

(F) *Examination requirements for class 1 piping and nozzle dissimilar-metal butt welds.*

(1) Licensees of existing, operating pressurized-water reactors as of July 21, 2011 shall implement the requirements of ASME Code Case N-770-1, subject to the conditions specified in paragraphs (g)(6)(ii)(F)(2) through (g)(6)(ii)(F)(10) of this section, by the first refueling outage after August 22, 2011.

(2) Full structural weld overlays authorized by the NRC staff may be categorized as Inspection Items C or F, as appropriate; welds that have been mitigated by the Mechanical Stress Improvement Process (MSIP™) may be categorized as Inspection Items D or E, as appropriate, provided the criteria in Appendix I of the code case have been met; for ISI frequencies, all other butt welds that rely on Alloy 82/182 for structural integrity shall be categorized as Inspection Items A-1, A-2 or B until the NRC staff has reviewed the mitigation and authorized an alternative code case Inspection Item for the mitigated weld, or until an alternative code case Inspection Item is used based on conformance with an ASME

mitigation code case endorsed in Regulatory Guide 1.147 with conditions, if applicable, and incorporated in this section.

(3) Baseline examinations for welds in Table 1, Inspection Items A-1, A-2, and B, shall be completed by the end of the next refueling outage after January 20, 2012. Previous examinations of these welds can be credited for baseline examinations if they were performed within the re-inspection period for the weld item in Table 1 using Section XI, Appendix VIII requirements and met the Code required examination volume of essentially 100 percent. Other previous examinations that do not meet these requirements can be used to meet the baseline examination requirement, provided NRC approval of alternative inspection requirements in accordance with paragraphs (a)(3)(i) or (a)(3)(ii) of this section is granted prior to the end of the next refueling outage after January 20, 2012.

(4) The axial examination coverage requirements of -2500(c) may not be considered to be satisfied unless essentially 100 percent coverage is achieved.

(5) All hot-leg operating temperature welds in Inspection Items G, H, J, and K must be inspected each interval. A 25-percent sample of cold-leg operating temperature welds must be inspected whenever the core barrel is removed (unless it has already been inspected within the past 10 years) or has reached 20 years, whichever is less.

(6) For any mitigated weld whose volumetric examination detects growth of existing flaws in the required examination volume that exceed the previous IWB-3600 flaw evaluations or new flaws, a report summarizing the evaluation, along with inputs, methodologies, assumptions, and cause of the new flaw or flaw growth is to be provided to the NRC prior to the weld being placed in service other than modes 5 or 6.

(7) For Inspection Items G, H, J, and K, when applying the acceptance standards of ASME B&PV Code, Section XI, IWB-3514, for planar flaws contained within the inlay or onlay, the thickness "t" in IWB-3514 is the thickness of the inlay or onlay. For planar flaws in the balance of the dissimilar metal weld examination volume, the thickness "t" in IWB-3514 is the combined thickness of the inlay or onlay and the dissimilar metal weld.

(8) Welds mitigated by optimized weld overlays in Inspection Items D and E are not permitted to be placed into a population to be examined on a sample basis and must be examined once each inspection interval.

(9) Replace the first two sentences of Extent and Frequency of Examination for Inspection Item D in Table 1 of Code Case N-770-1 with, "Examine all welds no sooner than the third refueling outage and no later than 10 years following stress improvement application." Replace the first two sentences of Note (11)(b)(2) in Code Case N-770-1 with, "The first examination following weld inlay, onlay, weld overlay, or stress improvement for Inspection Items D through K shall be performed as specified."

(10) Note (2) to Figure 5(a) of Code Case N-770-1 pertaining to alternative examination volume for optimized weld overlays may not be applied unless NRC approval is authorized under paragraphs (a)(3)(i) or (a)(3)(ii) of this section.

* * * * *

Footnotes to § 50.55a:

¹ For inspections to be conducted once per interval, the inspections shall be performed in accordance with the schedule in Section XI, paragraph IWB-2400, except for plants with inservice inspection programs based on a Section XI edition or addenda prior to the 1994 Addenda. For plants with inservice

inspection programs based on a Section XI edition or addenda prior to the 1994 Addenda, the inspection shall be performed in accordance with the schedule in Section XI, paragraph IWB-2400, of the 1994 Addenda.

* * * * *

Dated at Rockville, Maryland, this 27th day of May 2011.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2011-14652 Filed 6-20-11; 8:45 am]

BILLING CODE 7590-01-P

Reader Aids

Federal Register

Vol. 76, No. 119

Tuesday, June 21, 2011

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	202-741-6000
Laws	741-6000
Presidential Documents	
Executive orders and proclamations	741-6000
The United States Government Manual	741-6000
Other Services	
Electronic and on-line services (voice)	741-6020
Privacy Act Compilation	741-6064
Public Laws Update Service (numbers, dates, etc.)	741-6043
TTY for the deaf-and-hard-of-hearing	741-6086

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: www.fdsys.gov.

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: www.ofr.gov.

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <http://listserv.access.gpo.gov> and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings)*; then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws. To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: fedreg.info@nara.gov
The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at <http://www.regulations.gov>.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at <http://bookstore.gpo.gov/>.

FEDERAL REGISTER PAGES AND DATE, JUNE

31451-31784	1
31785-32064	2
32065-32312	3
32313-32850	6
32851-33120	7
33121-33612	8
33613-33966	9
33967-34142	10
34143-34572	13
34573-34844	14
34845-35094	15
35095-35300	16
35301-35712	17
35713-35956	20
35957-36280	21

CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR		201	31790
780	34143	210	34542, 35301
782	34573	215	34542
Proposed Rules:		220	34542
Ch. XI	32330	225	34542
Ch. XVIII	31884	226	34542
Ch. XXIV	31884	246	35095
Ch. XXVII	34003	457	32067
		932	35957
		953	33967
		985	33969
		3430	35318, 35319
3 CFR		Proposed Rules:	
Proclamations:		36	31887
8683	32065	205	31495, 34180
8684	32851	271	35787
8685	32853	273	35787
8686	32855	281	35787
8687	32857	916	31888
8688	33119	917	31888
8689	35089	958	35997
Executive Orders:		983	34181
13575	34841	987	34618
13576	35297	1170	34004
13577	35715	1205	32088
Administrative Orders:		3434	34187
Memorandums:		8 CFR	
Memorandum of May		214	33970
31, 2011	33117	Proposed Rules:	
Memorandum of June		Ch. I	32331
6, 2011	33613	Ch. V	34003
Notice of June 14,		9 CFR	
2011	35093	307	33974
Notice of June 17,		381	33974
2011	35955	590	33974
Presidential		Proposed Rules:	
Determinations:		92	31499
No. 2011-10 of June 3,		93	31499
2011	35713	94	31499
No. 2011-11 of June 8,		96	31499
2011	35719	98	31499
5 CFR		10 CFR	
Ch. LXX	35957	20	35512
531	32859	30	35512
532	31785	40	35512
Proposed Rules:		50	35512, 36232
Ch. I	31886	70	35512
532	31885	72	33121, 35512
Ch. VII	32088	217	33615
Ch. XXVI	32330	430	31750
Ch. XXVIII	34003	431	31795, 33631
Ch. XXXV	31886	Proposed Rules:	
Ch. XLII	34177	35	33173
Ch. XLV	32330	40	31507
Ch. LIX	31884	50	32878, 34007
Ch. LXV	31884	72	35137
6 CFR		73	35137
Proposed Rules:		150	31507
Ch. I	32331	430	34914
5	34177, 34616	431	34192
7 CFR			
51	31787		

11 CFR	382.....32107	1310.....31824	Ch. VII.....34177
Proposed Rules:	Ch. V.....31884	Proposed Rules:	1602.....31892
109.....36000	15 CFR	Ch. I.....32330	Ch. XXV.....34177
114.....36001	732.....35276	Ch. II.....34003	2550.....31544
12 CFR	738.....35276	201.....35672, 35678	30 CFR
202.....31451	740.....34577, 35276	310.....35678	75.....35968
213.....35721	743.....34577, 35276	352.....35669	950.....34816
225.....35959	774.....34577, 35276	573.....32332	Proposed Rules:
226.....35722, 35723	16 CFR	600.....36019	Ch. I.....34177
309.....35963	259.....31467	610.....36019	75.....35801
310.....35963	Proposed Rules:	680.....36019	104.....35801
651.....35966	309.....31513	22 CFR	906.....36039
652.....35966	1460.....33179	62.....33993	950.....36040
914.....33121	17 CFR	208.....34143	31 CFR
1229.....35724	200.....35348	210.....34573	10.....32286
1235.....33121	240.....34300, 34579	24 CFR	500.....35739
1237.....35724	249.....34300	Proposed Rules:	505.....35739
1732.....33121	Proposed Rules:	Ch. I.....31884	510.....35740
Proposed Rules:	1.....32880, 33066, 35372	Ch. II.....31884	545.....31470
4.....32332	5.....33066	267.....34010	Proposed Rules:
5.....32332	7.....33066	Ch. III.....31884	Ch. IX.....34003
7.....32332	8.....33066	Ch. IV.....31884	32 CFR
28.....32332	15.....33066	Ch. V.....31884	706.....32865
34.....32332	18.....33066	Ch. VI.....31884	Proposed Rules:
43.....34010	21.....33066	Ch. VIII.....31884	Ch. I.....32330
225.....35351	22.....31518, 33818, 35141	Ch. IX.....31884	Ch. V.....32330
244.....34010	36.....33066	Ch. X.....31884	Ch. VI.....32330
373.....34010	41.....33066	Ch. XII.....31884	Ch. VII.....32330
652.....35138	140.....33066	25 CFR	Ch. XII.....32330
Ch. XVII.....31884	145.....33066	Proposed Rules:	
1234.....34010	155.....33066	Ch. I.....33180	33 CFR
1236.....35791	166.....33066	Ch. III.....33181	1.....31831
13 CFR	190.....31518, 33818, 35141	Ch. V.....32330	27.....31831
124.....33980	230.....31518, 34920	26 CFR	96.....31831
14 CFR	232.....33420	1.....33994, 33997	100.....32313, 34606
1.....34576	239.....31518	31.....32864	101.....31831
23.....33129	240.....32880, 33420, 34920	Proposed Rules:	107.....31831
25.....31451, 31453, 31454,	246.....34010	1.....31543, 32880, 32882,	110.....35742
31456, 33129, 35324, 35736	249.....33420	34017, 34019	115.....31831
27.....33129	249b.....33420	31.....32885	117.....31831, 31838, 34848,
29.....33129	260.....34920	301.....31543	35349, 35978
33.....33981	19 CFR	405.....36178	135.....31831
39.....31457, 31459, 31462,	122.....31823	406.....36178	140.....31831
31465, 31796, 31798, 31800,	Proposed Rules:	27 CFR	148.....31831
31803, 33982, 33984, 33986,	Ch. I.....32331	Proposed Rules:	150.....31831
33988, 33991, 35327, 35330,	20 CFR	Ch. II.....34003	151.....31831
35334, 35336, 35340, 35342,	Proposed Rules:	28 CFR	160.....31831
35344 35346	Ch. III.....31892	Proposed Rules:	161.....31831
71.....31821, 31822, 34576,	Ch. IV.....34177	Ch. I.....34003	162.....31831
35097, 35966, 35967	Ch. V.....34177	Ch. II.....34003	164.....31831
91.....31823	Ch. VI.....34177	III.....34003	165.....31839, 31843, 31846,
93.....34576	Ch. VII.....34177	V.....34003	31848, 31851, 31853, 32069,
95.....33136	Ch. IX.....34177	VI.....34003	32071, 32313, 33151, 33154,
97.....35098, 35101	21 CFR	104.....36027	33155, 33157, 33639, 33641,
121.....35103	5.....31468	29 CFR	33643, 33646, 34145, 34852,
135.....35103	10.....31468	1910.....33590	34854, 34855, 34859, 34862,
417.....33139	14.....31468	1915.....33590	34867, 34869, 35104, 35106,
Proposed Rules:	19.....31468	1917.....33590	35742
21.....36001	20.....31468	1918.....33590	166.....31831
36.....36001	21.....31468	1919.....33590	167.....31831
39.....31508, 32103, 33173,	201.....35620, 35665	1926.....33590	169.....31831
33176, 33658, 33660, 34011,	310.....35620, 35665	1928.....33590	175.....33160
34014, 34625, 34918, 36011	312.....32863	4001.....34590	183.....33160
71.....31510, 32879, 34196,	314.....31468	4022.....34590, 34847	Proposed Rules:
34627, 35362, 35363, 35369,	320.....32863	4044.....34590, 34847	Ch. I.....32331
35370, 35371, 35799, 36014,	350.....31468	Proposed Rules:	100.....35802
36017	516.....31468	Ch. II.....34177	110.....34197
139.....32105	814.....31468	Ch. IV.....34177	165.....31895
217.....31511	874.....34845	Ch. V.....34177	167.....35805
241.....31511			Ch. II.....32330
298.....31511			175.....35378
			183.....35378

334.....35379	41 CFR	Ch. XIII.....32330	Ch. 5.....32088
34 CFR	302-16.....35110	46 CFR	Ch. 16.....31886
Ch. II.....32073	Proposed Rules:	45.....32323	Ch. 18.....31884
222.....31855	Ch. 50.....34177	Proposed Rules:	Ch. 24.....31884
668.....34386	Ch. 60.....34177	Ch. I.....32331	Ch. 28.....34003
36 CFR	Ch. 61.....34177	Ch. III.....32331	Ch. 29.....34177
Proposed Rules:	Ch. 101.....32088	10.....35169	Ch. 61.....32088
Ch. III.....32330	Ch. 102.....32088	12.....35173	
37 CFR	102-34.....31545	515.....34945	49 CFR
201.....32316	Ch. 105.....32088	47 CFR	171.....32867
38 CFR	Ch. 128.....34003	1.....32866	177.....32867
18.....33999	301-11.....32340	2.....33653	192.....35130
21.....33999	302-2.....32340	73.....33656	195.....35130
Proposed Rules:	302-3.....32340	80.....33653	213.....34890
17.....35162	302-17.....32340	90.....33653	383.....32327
39 CFR	42 CFR	Proposed Rules:	390.....32327
111.....34871	412.....32085	4.....33686	572.....31860
40 CFR	434.....32816	11.....35810	Proposed Rules:
52.....31856, 31858, 32321,	438.....32816	15.....35176	390.....32906
33647, 33650, 33651, 34000,	447.....32816	27.....32901	391.....34635
34608, 34872	Proposed Rules:	73.....32116, 35831	396.....32906
63.....35744	Ch. I.....32330	74.....35181	Ch. XII.....32331
180.....31471, 31479, 31485,	5.....31546	76.....32116	
34877, 34883	84.....33188	78.....35181	50 CFR
268.....34147	401.....33566	101.....35181	17.....31866, 33036, 35349,
271.....34147	412.....34633	48 CFR	35979
300.....32081	413.....34633	203.....32840	217.....34157, 35995
Proposed Rules:	414.....31547, 32410	211.....33166	223.....35755
Ch. I.....35383	476.....34633	212.....33170	300.....34890
52.....31898, 31900, 32110,	485.....35684	225.....32841, 32843	600.....34892
32113, 32333, 33181, 33662,	Ch. V.....32330	246.....33166	622.....31874, 34892
34020, 34021, 34630, 34935,	44 CFR	252.....32840, 32841, 33166	635.....32086
35167, 35380	64.....34611	539.....34886	648.....31491, 32873, 34903
63.....35806	65.....35753	552.....34886	660.....32876, 34910
81.....36042	67.....35111, 35119	Proposed Rules:	679.....31881, 33171
86.....32886	Proposed Rules:	Ch. 1.....32133, 32330	680.....35772, 35781
174.....33183	Ch. I.....32331	2.....32330	Proposed Rules:
180.....33184, 34937	67.....32896, 36044	8.....34634	17.....31686, 31903, 31906,
268.....34200	45 CFR	9.....34634	31920, 32911, 33880, 33924,
271.....34200	Proposed Rules:	17.....31886	36049, 36053, 36068
300.....32115	Ch. II.....32330	21.....31886	223.....31556, 34023
Ch. IV.....34003	Ch. III.....32330	52.....32330, 34634	224.....31556
Ch. VII.....32330	Ch. IV.....32330	54.....32330	226.....32026
	Ch. V.....34003	203.....32846	635.....36071
	Ch. VIII.....31886	204.....32846	648.....34947, 35578
	Ch. X.....32330	252.....32845, 32846	660.....33189
			665.....32929

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at <http://www.gpo.gov/fdsys>. Some laws may not yet be available.

H.R. 754/P.L. 112-18
Intelligence Authorization Act for Fiscal Year 2011 (June 8, 2011; 125 Stat. 223)
Last List June 6, 2011

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly

enacted public laws. To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html>

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.