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Presidential Documents

Title 3—

The President

Proclamation 8475 of January 20, 2010

National Angel Island Day, 2010

By the President of the United States of America

A Proclamation

One hundred years ago, the Angel Island Immigration Station in San Francisco Bay opened for the first time, and an important chapter of the American narrative began. It would be written by those who walked through the station's doors over the next three decades. From the cities, villages, and farms of their birth, they journeyed across the Pacific, seeking better lives for themselves and their children. Many arrived at Angel Island, weary but hopeful, only to be unjustly confined for months or, in some cases, years. As we remember their struggle, we honor all who have been drawn to America by dreams of limitless opportunity.

Unlike immigrants who marveled at the Statue of Liberty upon arrival at Ellis Island, those who came to Angel Island were greeted by an intake facility that was sometimes called the "Guardian of the Western Gate." Racially prejudiced immigration laws of the time subjected many to rigorous exams and interrogations, as well as detention in crowded, unsanitary barracks. Some expressed themselves by carving poetry and inscriptions into the walls in their native language—from Chinese, Japanese, and Korean to Russian, German, and Urdu. These etchings remain on Angel Island today as poignant reminders of the immigrant experience and an unjust time in our history.

If there is any vindication for the Angel Island immigrants who endured so many hardships, it is the success achieved by those who were allowed entry, and the many who, at long last, gained citizenship. They have contributed immeasurably to our Nation as leaders in every sector of American life. The children of Angel Island have seized the opportunities their ancestors saw from across an ocean. By demonstrating that all things are possible in America, this vibrant community has created a beacon of hope for future generations of immigrants.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 21, 2010, as National Angel Island Day. I call upon the people of the United States to learn more about the history of Angel Island and to observe this anniversary with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of January, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–1618
Filed 1–25–10; 8:45 am]
Billing code 3195–W0–P

Rules and Regulations

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

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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0713; Directorate Identifier 2007–NM–303–AD; Amendment 39–16180; AD 2010–02–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318 Series Airplanes

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

ACTION: Final rule.

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

Some operators have reported airframe vibration under specific flight conditions including gusts.

Investigations have revealed that under such conditions, vibrations may occur when the hinge moment of the elevator is close to zero, associated to elevator free-play.

* * * * *

The unsafe condition is excessive vibration of the elevators, which could result in reduced structural integrity and reduced controllability of the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective March 2, 2010.

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 13, 2009 (74 FR 40776). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Some operators have reported airframe vibration under specific flight conditions including gusts.

Investigations have revealed that under such conditions, vibrations may occur when the hinge moment of the elevator is close to zero, associated to elevator free-play.

* * * * *

The unsafe condition is excessive vibration of the elevators, which could result in reduced structural integrity and reduced controllability of the airplane. The corrective action includes inspecting the elevators for excessive freeplay, and repairing the elevator or servo controls, if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The commenter, Airbus, states that it has no comment on the NPRM.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD affects 11 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,760, or $160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–02–09 Airbus: Amendment 39–16180. Docket No. FAA–2009–0713; Directorate Identifier 2007–NM–303–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 2, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A318 series airplanes; certificated in any category.

Subject

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

Reason

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

Some operators have reported airframe vibration under specific flight conditions including gusts.

Investigations have revealed that under such conditions, vibrations may occur when the hinge moment of the elevator is close to zero, associated to elevator free-play.

* * * * *

The unsafe condition is excessive vibration of the elevators, which could result in reduced structural integrity and reduced controllability of the airplane. The corrective action includes inspecting the elevators for excessive freeplay, and repairing the elevator or servo controls, if necessary.

Actions and Compliance

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

(1) At the later of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, inspect the elevators for excessive freeplay, using a load application tool and a spring scale assembly, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent). Repeat the inspection at intervals not to exceed 20 months.

Note 1: Guidance on the inspection procedures can be found in Task 27–34–00–200–001 of the Airbus A318/A319/A320/A321 Aircraft Maintenance Manual (AMM).

(i) Within 20 months since the date of issuance of the original French, German, or EASA airworthiness certificate or the date of issuance of the original French, German, or EASA export certificate of airworthiness, or within 3 months after the effective date of this AD, whichever occurs later.

(ii) Within 20 months since the last inspection of the elevators for excessive freeplay performed in accordance with Task 27–34–00–200–001 of the Airbus A318/A319/A320/A321 AMM.

(2) If any inspection required by paragraph (f)(1) of this AD indicates that the freeplay in the elevator exceeds 7 millimeters, before further flight, repair the elevator or servo controls in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA (or its delegated agent).

FAA AD Differences

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

(1) The EASA AD applies to Airbus Model A318, A319, A320, and A321 series airplanes, but the FAA AD applies only to Airbus Model A318 series airplanes. The actions required by the EASA AD for Airbus Model A319, A320, and A321 series airplanes are addressed in FAA AD 2001–16–09, Amendment 39–12377; and FAA AD 2005–22–10 R1, Amendment 39–14354.

(2) This FAA AD does not require modification of the elevator neutral setting as specified in paragraph 2. of the EASA AD because this modification is already part of the FAA-approved type design for Airbus Model A318 series airplanes.

(3) This FAA AD does not require a detailed inspection to determine the position of each tail cone triangle as specified in paragraph 3. of the EASA AD because that action was already accomplished on all Airbus Model A318 series airplanes during production.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

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

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

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2007–0163, dated June 11, 2007, for related information.

Material Incorporated by Reference

(i) None.

Issued in Renton, Washington, on January 14, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–1290 Filed 1–25–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0326; Airspace Docket 09–ASO–15]

Establishment of Class D and Class E Airspace, Modification of Class E Airspace; Ocala, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, confirmation of effective date; correction.

SUMMARY: This action confirms the effective date of a direct final rule published in the **Federal Register** June 24, 2009, that establishes Class D airspace, Class E surface airspace as an extension of the Class D airspace, and modifies the existing Class E airspace at Ocala International Airport-Jim Taylor Field, Ocala, FL. This action also makes a minor correction to the existing Class E airport description.

DATES: *Effective Date:* 0901 UTC, January 26, 2010.

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

SUPPLEMENTARY INFORMATION:

History

The rule establishing Class D and E airspace and modifying Class E airspace for Ocala International Airport—Jim Taylor Field, Ocala, FL, published in the **Federal Register** June 24, 2009 (74 FR 29939), became effective August 27, 2009. Subsequent to the effective date of the rule, the FAA found that the radius in the Class E5 description for Ocala International Airport—Jim Taylor Field was stated incorrectly. This action corrects that error.

Confirmation of Effective Date

The FAA published this direct final rule with a request for comments establishing and modifying Class D and E airspace, Ocala, FL in the **Federal Register** on June 24, 2009 (74 FR 29939), Docket No. FAA–2009–0326; Airspace Docket 09–ASO–15. The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on August 27, 2009. No adverse comments were received, and thus this notice confirms that effective date. With the exception of the changes described above, this rule is the same as that published in the **Federal Register** as a direct final rule.

Technical Amendment

■ Accordingly, pursuant to the authority delegated to me, the reference to FAA Order 7400.9 for FR Doc. E9–14821, FAA Airspace Docket No. 09–ASO–15, as published in the **Federal Register** June 24, 2009 (74 FR 29939), is corrected as follows:

■ On page 29940, column two, line 46, amend the language to read:

§ 71.1 [Amended]

* * * * *

"* * * feet above the surface within a 8.9-mile"

* * * * *

Issued in College Park, Georgia, on January 13, 2010.

Barry A. Knight,

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

[FR Doc. 2010–1379 Filed 1–25–10; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 432

Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products

AGENCY: Federal Trade Commission.

ACTION: Confirmation of Rule.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") has completed its regulatory review of its Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products ("Amplifier Rule" or "Rule"), as part of the Commission's systematic review of all current Commission regulations and guides, and has determined to retain the Rule in its current form. The Commission also takes this opportunity to issue guidance concerning the testing requirements under the Rule for measuring power ratings of multichannel amplifiers.

DATES: This action is effective as of January 26, 2010.

ADDRESSES: Requests for copies of this notice should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Ave., NW, Washington, DC 20580. The notice also is available on the Internet at the Commission's website, (*http://www.ftc.gov*).

FOR FURTHER INFORMATION CONTACT: Jock Chung, (202) 326-2984, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission, as part of its oversight responsibilities, reviews its rules and guides periodically to seek information about their costs and benefits, as well as their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission.

On February 27, 2008, the Commission sought comment about the Amplifier Rule, including comments regarding whether there was a continuing need for the Rule, the impact of the Rule on the flow of truthful information to consumers, suggested modifications to the Rule, and the costs and benefits associated with the Rule. The Commission also sought specific comments concerning whether the Rule should be amended to address testing requirements for determining the power ratings for multichannel amplifiers.

The Commission has reviewed the comments, and concludes that the Rule continues to benefit consumers and should be retained. The Commission also has determined that the evidence does not indicate widespread deceptive or unfair practices that would justify any amendments to the Rule, including amendments to the testing procedures for multichannel amplifiers.

II. Background

In response to misleading or confusing power distortion and other performance claims, the Commission promulgated the Amplifier Rule in 1974 to assist consumers who purchase power amplification equipment. The Rule standardized the measurement and disclosure of various performance characteristics of power amplification equipment intended for home entertainment purposes. 39 FR 15387 (May 3, 1974).

In particular, the Rule requires that manufacturers fully drive all "associated" channels to the rated per channel power when measuring the power output of sound amplification equipment that is designed to amplify two or more channels simultaneously. At the time the Commission established the Rule, the only equipment subject to this requirement was stereo amplifiers, and thus the Rule required manufacturers to fully drive both "associated" channels of such amplifiers when measuring power output.

Technological developments have changed the market for sound power amplification equipment since the Commission issued the Amplifier Rule. For example, improvements in amplifier design have enabled manufactures to

make even inexpensive amplifiers with inaudible levels of harmonic distortion. Consequently, in 2000 the Commission exempted certain advertising from the Rule's Total Harmonic Distortion (THD) disclosure requirement. 65 FR 81232 (Dec. 22, 2000). Additionally, to address the development of self-powered subwoofer-satellite combination speaker systems, the Commission clarified the manner in which the Rule's testing procedures apply to these systems.

The introduction of multichannel "home theater" equipment with five or more channels also has dramatically improved consumer amplification choices. This improvement, however, raises questions regarding which of the new channels are "associated" under the Rule. Consequently, in 2000 the Commission issued a Supplemental Notice of Proposed Rulemaking ("SNPR") soliciting comment on Commission proposals to amend the definition of "associated channels" when measuring the power ratings of multichannel home theater amplifiers. 65 FR 80798 (Dec. 22, 2000). The SNPR elicited only one comment from the Consumer Electronics Association ("CEA"). CEA noted that there was no industry consensus regarding measuring power output of multichannel amplifiers.

On January 15, 2002, at the request of CEA, the Commission deferred action to allow industry to form a consensus on procedures for testing multichannel amplifiers . 67 FR 1915 (Jan. 15, 2002). Although CEA subsequently issued a standard, designated EIA/CEA-490-A, "Test Methods of Measurement for Audio Amplifiers," the Commission's review did not find widespread adoption of this standard.

On March 20, 2007, the Commission determined that industry had not agreed on a power rating standard for multichannel amplifiers. 72 FR 13052 (March 20, 2007). With no industry standard in place, and with only CEA's comment on the rulemaking record, the Commission concluded it would not be in the public interest to amend the Rule, and terminated its rulemaking. The Commission stated that until it provided further guidance regarding which channels need to be associated for purposes of rating multichannel amplifiers, it would not enforce the association requirements of Section 432.2 of the Rule as the Rule relates to the continuous power output per channel ratings for multichannel amplifiers.[1]

[1] 72 FR 13052, 13053.

III. Regulatory Review

On February 27, 2008, the Commission published a **Federal Register** notice ("FRN") seeking comment on the Amplifier Rule as part of the Commission's periodic review of the Rule to determine its current effectiveness and impact. 73 FR 10403 (Feb. 27, 2008). As noted above, the FRN sought comment on the continuing need for the Rule; the costs and benefits of the Rule; and what effects, if any, technological or economic changes have had on the Rule. In addition, the FRN specifically requested comments regarding whether the Rule should be revised to include additional power ratings guidance for multichannel amplifiers, and requested comments about the potential benefits and costs of amendments to the Rule to address power ratings for multichannel amplifiers.

The Commission received two comments in response, one from Richard Myslinski and one from Sony Electronics Inc. ("Sony"); these comments are available at (*http://www.ftc.gov/os/comments/amplifirerule/index.shtm?*). Mr. Myslinski's sole comment was "I think the FTC should let the free market reign and avoid further burdensome regulation." Mr. Myslinski did not submit any further evidence with his comment.

Sony commented that the Amplifier Rule serves a useful purpose, noting that "the Rule gives manufacturers a 'bright-line' standard against which to measure themselves and the claims of their competitors." Sony further stated that "although [power output of amplifiers] can be objectively measured, the measurements can be done in different ways, thus making the claims susceptible to manipulation," and that "[t]his combination of factors makes the Rule an important element in the manufacturer-customer relationship, and it should remain as such." Moreover, Sony stated that "[w]ithout a clear rule, such as the current Rule . . ., Sony believes that there is a great deal of risk that, at best, consumers would not receive information useful to their purchasing decision, or, at worst, could be deceived by certain power output claims."

More specifically, Sony suggested that the Commission amend the Rule to permit manufacturers to disclose power ratings measured according to the procedures set forth in 16 C.F.R. § 432, according to the procedures specified in EIA/CEA-490-A, or according to both procedures. Sony claimed that "[t]esting according to [EIA/CEA-490-A] would protect and inform consumers at least as much as the test procedures and disclosures currently in the Rule," that "[t]he greater specificity and scope of [EIA/CEA-490-A] would encourage manufacturers to differentiate products based on a number of technical characteristics," and that disclosing power ratings under both testing methodologies would give consumers a more complete picture of the power of the system.

Sony also stated that the Amplifier Rule should not be amended to define all channels of a multi-channel home theater system as "associated." Sony contended that "this approach . . . would fail to acknowledge the changes in home audio systems over the past 34 years, would prove unworkable in light of ongoing developments in audio technologies, and could stifle innovation."

The Commission concludes that there is a continuing need for the Amplifier Rule. Sony's comment provides evidence that the Amplifier Rule serves a useful purpose, while imposing minimal costs on the industry, and the Commission has no evidence to the contrary.

The Commission has determined that it will not seek to amend the Rule to permit manufacturers to use the EIA/CEA-490-A standard as an alternative for rating the power output of multichannel amplifiers. Allowing this alternate standard would invite consumer confusion because the EIA/CEA-490-A standard and the Rule would produce different testing results.[2] Consequently, consumers would not be able to compare amplifiers measured under one standard to amplifiers measured under the other standard – a significant problem that led to the promulgation of the Rule.[3]

The Commission also has determined that it will not amend the Rule to define all channels of a multi-channel home theater system as "associated" channels that must be driven to full rated power

[2] For example, the EIA/CEA-490-A standard specifies that power measurements be made at one percent THD and at a 1000 Hz, whereas the FTC protocol leaves the level of THD and the power bandwidth to the discretion of the tester. In addition, the EIA/CEA-490-A standard only requires that one channel be driven to full rated power, with all remaining channels driven to one-eighth power simultaneously. As set forth in this notice, the Amplifier Rule requires that at least the left and right front channels of multichannel amplifiers be driven to full rated power simultaneously.

[3] Indeed, when the Commission promulgated the Rule in 1974, it noted that at the time there were "no less than seven commonly used methods of determining amplifier wattage ratings, all of which will yield substantially different results." 39 FR 15387, 15388.

simultaneously for measuring power output. Sony commented that "the additional channels in today's 5.1 and 7.1 home theater systems are designed to carry vastly different sounds at vastly different levels,"[4] Sony commented further that "to maintain the same power ratings if it were necessary to drive all channels simultaneously during testing, virtually all manufacturers would have to change the sound platform of their amplifiers and receivers to be able to sustain such output," which "would drive up the costs of production considerably, [and] in turn drive up the ultimate cost to consumers."

The Commission has received no contrary evidence indicating that all channels of a multi-channel home theater system frequently would be driven to maximum power simultaneously during typical playback conditions in home use. Absent such evidence, the Rule should not be amended.

The Commission previously stated that it would not enforce the "association" requirements of Section 432.2 of the Rule until it provided further guidance regarding which channels need to be associated for purposes of rating multichannel amplifiers. The Commission now provides that guidance. Specifically, at a minimum, the left front and right front channels of multichannel amplifiers are associated under the Rule. It, therefore, would be a violation of the Rule to make power output claims for multichannel amplifiers utilized in home entertainment products unless those representations are substantiated by measurements made with, at a minimum, the left front and right front channels driven to full rated power.

The left and right front channels of home theater multichannel amplifiers are responsible for reproducing a substantial portion of the musical soundtracks of movies, as well as a substantial portion of the program content of music CDs and DVDs.[5] These soundtracks and music program material, like that of normal stereo recordings, typically drive both the left and right front channels simultaneously. Thus, if a manufacturer does not, at a minimum, drive the left and right front channels to rated per channel power during power output testing of a multichannel amplifier, the test results will not provide a useful measurement of the amplifier's ability to play such content.[6] Furthermore, the most prominent disclosed output in any direct or indirect representation of the power output of a multichannel amplifier must treat the left and right front channels, at a minimum, as being associated.

Finally, the Commission notes that pursuant to § 432.2 and § 432.4 of the Rule, marketers must express all power output disclosures in minimum watts "per channel." Consequently, representations of aggregate power output, such as "500 watts" or "500 watts total power" for an amplifier with five channels that can output 100 minimum watts per channel, would not comply with the Amplifier Rule.

IV. Conclusion

For the reasons described above, the Commission has determined to retain the current Amplifier Rule.

List of Subjects in 16 CFR Part 432

Amplifiers, Home entertainment products, Trade practices.

Authority: 15 U.S.C. 41-58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2010–1418 Filed 1–25–10; 11:14 am]

BILLING CODE 6750–01–S

[4] Other sources support this contention. *See, e.g.*, What is Surround Sound, (*http://www.customhomeaudio.net/customhomeaudio/surroundsound.html*) (Stating that in multichannel systems "[t]here is a pair of surround sound speakers that is placed to the side of (and slightly above) the audience to provide the surround sound and ambient effects"); Mike Sokol, Surround Sound Mixing Techniques, (2005), (*http://www.digifreq.com/digifreq/article.asp?ID=23*) ("[M]ovie soundtracks [mix] . . . suround [*sic*] effects in the rear.").

[5] *See, e.g.*, Tomlinson Holman, Surround Sound, 197 (Focal Press 2007) (discussing the soundtrack for the beach landing scenes of the film Saving Private Ryan, and noting the importance of a pure stereo mix in the left front and right front channels); What is Surround Sound, (*http://www.customhomeaudio.net/customhomeaudio/surroundsound.html*) ("There is one center speaker which carries most of the dialog . . . and part of the soundtrack. There are left and right front speakers that carry most of the soundtrack (music and sound effects)."); What is Surround Sound?, (*http://www.tech-faq.com/surround-sound.shtml*) ("[The front right and front left speakers] are usually the most important speakers in your surround sound set up. Most of the music or sound will come from these two speakers.").

[6] This procedure also will promote consistency between the per channel power output ratings for stereo amplifiers and multichannel amplifiers.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM10–14–000]

Annual Update of Filing Fees

January 20, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; annual update of Commission filing fees.

SUMMARY: In accordance with 18 CFR 381.104, the Commission issues this update of its filing fees. This notice provides the yearly update using data in the Commission's Management, Administrative, and Payroll System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 2009.

DATES: *Effective Date:* February 25, 2010.

FOR FURTHER INFORMATION CONTACT: Raymond D. Johnson Jr., Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Room 42–66, Washington, DC 20426, 202–502–8402.

SUPPLEMENTARY INFORMATION:

Document Availability: In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Web site on the Internet, this information is available in the eLibrary (formerly FERRIS). The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of FERC's Web site during normal business hours. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

United States of America Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM10–14–000]

Annual Update of Filing Fees in Part 381 Annual Update of Filing Fees

(Issued January 20, 2010)

The Federal Energy Regulatory Commission (Commission) is issuing this notice to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to 18 CFR 381.104, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 2009 costs. The adjusted fees announced in this notice are effective February 25, 2010. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this Final Rule is not a major rule within the meaning of section 251 of Subtitle E of Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The Commission is submitting this Final Rule to both houses of the United States Congress and to the Comptroller General of the United States.

The new fee schedule is as follows:

Fees Applicable to the Natural Gas Policy Act	
1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403)	$11,520
Fees Applicable to General Activities	
1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). (18 CFR 381.302(a))	23,140
2. Review of a Department of Energy remedial order:	
Amount in controversy	
$0–9,999. (18 CFR 381.303(b))	100
$10,000–29,999. (18 CFR 381.303(b))	600
$30,000 or more. (18 CFR 381.303(a))	33,780
3. Review of a Department of Energy denial of adjustment:	
Amount in controversy	
$0–9,999. (18 CFR 381.304(b))	100
$10,000–29,999. (18 CFR 381.304(b))	600
$30,000 or more. (18 CFR 381.304(a))	17,710
4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a))	6,640
Fees Applicable to Natural Gas Pipelines	
1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b))	* 1,000
Fees Applicable to Cogenerators and Small Power Producers	
1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a))	19,900
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a))	22,530

* This fee has not been changed.

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Thomas R. Herlihy,

Executive Director.

■ In consideration of the foregoing, the Commission amends Part 381, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 381—FEES

■ 1. The authority citation for Part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 381.302 [Amended]

■ 2. In 381.302, paragraph (a) is amended by removing "$22,550" and adding "$23,140" in its place.

§ 381.303 [Amended]

■ 3. In 381.303, paragraph (a) is amended by removing "$32,920" and adding "$33,780" in its place.

§ 381.304 [Amended]

■ 4. In 381.304, paragraph (a) is amended by removing "$17,260" and adding "$17,710" in its place.

§ 381.305 [Amended]

■ 5. In 381.305, paragraph (a) is amended by removing "$6,470" and adding "$6,640" in its place.

§ 381.403 [Amended]

■ 6. Section 381.403 is amended by removing "$11,220" and adding "$11,520" in its place.

§ 381.505 [Amended]

■ 7. In 381.505, paragraph (a) is amended by removing "$19,390" and adding "$19,900" in its place and by removing "$21,950" and adding "$22,530" in its place.

[FR Doc. 2010–1446 Filed 1–25–10; 8:45 am]

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POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010–11 and CP2010–11; Order No. 362]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Inbound Air Parcel Post at non-Universal Postal Union rates to the product list. This action is consistent with changes in a postal reform law. The Commission is also making clarifying editorial changes to a related product that is already on the product list. Republication of the lists of market dominant and competitive products is consistent with a statutory requirement.

DATES: Effective January 26, 2010 and is applicable beginning December 15, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 62357 (November 27, 2009).

I. Introduction
II. Background
III. Comments
IV. Commission Analysis
V. Ordering Paragraphs

I. Introduction

The Postal Service seeks to add a new product, Inbound Air Parcel Post at Universal Postal Union (UPU) Rates, to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On November 17, 2009, the Postal Service filed a request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Inbound Air Parcel Post at Universal Postal Union (UPU) Rates to the Competitive Product List.[1] The Postal Service asserts that Inbound Air Parcel Post is a competitive product within the meaning of 39 U.S.C. 3632(b)(3).

The Postal Service states that prices and classifications underlying these rates are supported by Governors' Decision No. 09–15.[2] *Id.* at 1–2. This Request has been assigned Docket No. MC2010–11.

The Postal Service states that Governors' Decision No. 09–15 establishes the prices for Inbound Air Parcel Post at UPU Rates and the changes in classification necessary to implement those prices. *Id.* at 3. Governors' Decision No. 09–15 authorizes inward land rates when there is no contractual relationship with the tendering postal operator at the highest inward land rate for which the United States is eligible under the Parcel Post Regulations. *Id.* These rates are assigned Docket No. CP2010–11.

Request. In support of its Request, the Postal Service filed the following materials: (1) An application for non-public treatment of pricing and supporting documents filed under seal; [3] (2) a Statement of Supporting Justification as required by 39 CFR 3020.32;[4] (3) a redacted version of Governors' Decision No. 09–15 establishing prices and classifications for Inbound Air Parcel Post at UPU Rates, certification of the Governors' vote, a certification of compliance with 39 U.S.C. 3633(a), proposed Mail Classification Schedule (MCS) language, and a Management Analysis of Inbound Air Parcel Post at UPU Rates.[5]

Inbound Air Parcels are eligible to receive transportation by air rather than surface. Governors' Decision No. 09–15 at 2. The Postal Service indicates that the United States receives both air and surface parcels from foreign postal administrations which compensate the Postal Service for delivery of these parcels in the United States. It maintains that it has negotiated separate agreements for parcel rates with certain foreign posts, but most compensate it at the United States default rates for inbound parcel delivery. The default rates are known as inward land rates. The Postal Service notes that inward land rates are set according to formulas in the UPU Parcel Post Regulations which constitute international law. More specifically, the UPU Postal Operations Council sets these rates. Request at 2.

The Postal Service states that UPU Parcel Post Regulations require that rates are based on a percentage of each member's inward land rate in 2004.[6] UPU members may qualify for percentage "bonuses" to their base rate based upon their provision of certain value-added services.[7] The Postal Service states it is responsible for gathering information that the UPU Postal Operations Council uses to calculate the rates, including completion of a questionnaire on service bonus eligibility, and submission of annual inflation information from the Consumer Price Index for All Urban Consumers. It explains that the UPU uses this information from the member posts and publishes an annual notice in the fall establishing each postal administration's parcel rates for the following year. Request at 3.

The Postal Service states that because of the unique situation of setting inward land rates, it chose to establish rates for inbound air parcels by reference to the Universal Postal Convention. *Id.*

In the Statement of Supporting Justification, Brian Hutchins, Manager, International Postal Relations, asserts that the product satisfies 39 U.S.C. 3633(a). Id., Attachment 2, at 1–2.

W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). Request, Attachment 3. He asserts that the prices for Inbound Air Parcel Post at UPU Rates "should cover its attributable costs and preclude the subsidization of competitive products by market dominant products." *Id.*

The Postal Service filed much of the supporting materials under seal. In its Request, the Postal Service maintains that certain portions of Governors' Decision No. 09–15 and related financial information should remain confidential including portions of the management financial analysis of Inbound Air Parcel Post at UPU Rates and the accompanying analyses that provide prices, terms, conditions, cost data, and financial projections should remain under seal. Request at 2. Prices and classification changes established in Governors' Decision No. 09–15 are scheduled to take effect January 1, 2010. Governors' Decision No. 09–15 at 2.

In Order No. 345, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.[8]

III. Comments

Comments were filed by the Public Representative.[9] No other interested person submitted comments. The Public Representative states the Postal Service Request complies with applicable provisions of title 39, Commission rules, and the UPU. *Id.* at 1. He also notes the Postal Service has provided a rationale for non-public treatment of the information under seal. *Id.* at 2.

The Public Representative theorizes that in the instant agreement the Postal Service has not shown the cost coverage for Inbound Air Parcel Post is in compliance with 39 U.S.C. 3633. *Id.* at 4. He states that the Commission will have the ability to gain further information to determine cost coverage for this product with issuance of the Annual Compliance Determination (ACD). *Id.* However, the Public

[1] Request of the United States Postal Service to Add Inbound Air Parcel Post at Universal Postal Union (UPU) Rates to the Competitive Products List, Notice of Establishment of Prices and Classifications Not of General Applicability for Inbound Air Parcel Post at UPU Rates Established in Governors' Decision No. 09–15, and Application for Non-Public Treatment of Materials Filed Under Seal, November 17, 2009 (Request).

[2] The Request and Governors' Decision both note that the classification for Inbound Air Parcel Post was originally proposed by the Postal Service for the Mail Classification Schedule language in response to Docket No. RM2007–1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 (Order No. 43). *Id.* at 1.

[3] Attachment 1 to the Request.

[4] Attachment 2 to the Request.

[5] Attachment 3 to the Request.

[6] The Postal Service states that the Parcel Post Regulations also permit members to seek an "inflation-linked increase" to its base inward land rate up to a cap of 5 percent.

[7] The Postal Service states that services such as "track and trace, home delivery, published delivery standards, and use of a common inquiry system" qualify UPU members for bonuses. *Id.* Members may also seek an inflation-related adjustment to the base rate which is capped at 5 percent per year.

[8] PRC Order No. 345, Notice and Order Concerning Adding Inbound Air Parcel Post at UPU Rates to Competitive Product List, November 20, 2009 (Order No. 345).

[9] Public Representatives Comments in Response to United States Postal Service Filing of Request to Add Inbound Air Parcel Post at UPU Rates to the Competitive Products List, December 7, 2009 (Public Representative Comments).

Representative concludes that the Postal Service's proposal results in a benefit to its customers and the general public. *Id.* at 5.

IV. Commission Analysis

The Commission has reviewed the Request, the agreement, the financial analysis filed under seal, and the comments filed by all parties.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning the Inbound Air Parcel Post at UPU Rates to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

Product list assignment. In determining whether to assign Inbound Air Parcel Post at UPU Rates to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether "the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products." 39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that it does not have discretion to establish the formula for prices for Inbound Air Parcel Post at UPU Rates and therefore there is no connection between prices and the Postal Services' market role. Request, Attachment 2, para. (d). It affirms, as discussed above, that inward land rates are set based on formulas in the UPU Parcel Post Regulations which constitute international law. Under the Universal Postal Convention, postal operators tender air parcels to each other for delivery in the destination country at prices set by the UPU Postal Operations Council, except where postal operators have negotiated alternative prices for air parcels. Governors' Decision No. 09–15 at 1. As described above, annually, UPU members may elect to send the UPU secretariat inflation information in accordance with the Parcel Post Regulations in order to seek an "inflation-linked increase" to its base inward land rate up to a cap of 5 percent. Additionally, UPU members may qualify for "bonuses" to their new base rate if they provide certain value-added services, such as home delivery.

The Postal Service states that the United States completes a survey each year to qualify for the bonus based on its eligibility. *Id.* At the end of each year, the UPU's secretariat publishes each member's inward land rates based on its inflation information and questionnaire responses. *Id.* The Postal Service states that new rates are implemented at the beginning of the next calendar year and are effective until the end of that year. *Id.* Therefore, it concludes it does not exercise market power over this product relative to pricing. Request, Attachment 2, at 2.

The Postal Service states there are private consolidators, freight forwarders, and integrators who can provide similar services. *Id.* at 3, para. (f). It further states that this agreement has been classified as competitive because of its exclusion from the letter monopoly and the level of competition in the relevant market. *Id.* at 3.

The Postal Service notes that even though some incoming parcels subject to this agreement may contain letters, the prices paid under the agreement are higher than six times the rate for the current price of a one-ounce, single-piece First-Class Mail letter. *Id.*, para. (e). It also remarks that international parcel service has been a feature of the UPU system for decades which it suggests means that the international community finds the terms and conditions of the agreement satisfactory since there are competitive services available from private enterprises. The Postal Service states however, that it has no specific data on foreign postal operators or their customer's views on the regulatory classification of Inbound Air Parcel Post at UPU Rates. *Id.*, para. (g). The Postal Service states that the proposed modification is unlikely to have an impact on small business concerns since the product has been available for decades, and this agreement does not affect the availability of the service or the terms and conditions which affect small business. *Id.*, para. (h). The Postal Service notes that the proposed modification does not concern a change in the rates for which the Postal Service exercises discretion, but this proceeding formally presents the product for review by the Commission. *Id.*, para. (i).

The Postal Service's Request notes that it has previously taken steps to add Inbound Air Parcel Post paying rates established through the UPU to the competitive products list and refers to Order No. 43.[10] In Order No. 43, the Commission classified Inbound Air Parcel Post in the MCS as a competitive product, which included those at UPU rates. The Postal Service subsequently filed a negotiated service agreement with Royal Mail for Inbound Air Parcel Post which the Commission approved in Order No. 218, adding it as a new product to the Competitive Product List.[11]

The Postal Service proposes to add Inbound Air Parcel Post at UPU rates as a new product. See Request at 1. Thus, the Request presents for regulatory review a new product, Inbound Air Parcel Post at UPU Rates, for inclusion in the MCS.

Having considered the statutory requirements, the support offered by the Postal Service, and all comments, the Commission finds that Inbound Air Parcel Post at UPU Rates is appropriately classified as a competitive product and that it shall be added to the Competitive Product List.

The existing category, Inbound Air Parcel Post, shall be renamed Inbound Air Parcel Post (at non-UPU rates). Currently, this category includes the Royal Mail Inbound Air Parcel Post Agreement.

Cost considerations. The Postal Service presents a financial analysis showing that the Inbound Air Parcel Post at UPU Rates product covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Inbound Air Parcel Post at UPU Rates should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed Inbound Air Parcel Post at UPU Rates agreement

[10] *See* Docket No. RM2007–1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 at para. 3030 "[A]ir Parcel Post Shipments are appropriately classified as competitive."

[11] *See* Docket Nos. MC2009–24 and CP2009–28, Order Concerning Royal Mail Inbound Air Parcel Post Negotiated Service Agreement, May 29, 2009.

indicates that it comports with the provisions applicable to rates for competitive products.

In conclusion, the Commission approves Inbound Air Parcel Post at UPU Rates as a new product. The revision to the Competitive Product List is shown below the signature of this order and is effective upon issuance of this order.

V. Ordering Paragraphs

It is ordered:

1. Inbound Air Parcel Post (at UPU Rates) is added to the Competitive Product List as a new product.

2. The existing Inbound Air Parcel Post category which includes the Royal Mail Group Inbound Air Parcel Post Agreement shall be renamed Inbound Air Parcel Post (at non-UPU rates).

3. The Secretary shall arrange for the publication of this Order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative Practice and Procedure; Postal Service.

By the Commission.

Shoshana M. Grove,

Secretary.

■ For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to Subpart A of Part 3020–Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List
First-Class Mail
- Single-Piece Letters/Postcards
- Bulk Letters/Postcards
- Flats
- Parcels
- Outbound Single-Piece First-Class Mail International
- Inbound Single-Piece First-Class Mail International

Standard Mail (Regular and Nonprofit)
- High Density and Saturation Letters
- High Density and Saturation Flats/Parcels
- Carrier Route
- Letters
- Flats
- Not Flat-Machinables (NFMs)/Parcels

Periodicals
- Within County Periodicals
- Outside County Periodicals

Package Services
- Single-Piece Parcel Post
- Inbound Surface Parcel Post (at UPU rates)
- Bound Printed Matter Flats
- Bound Printed Matter Parcels
- Media Mail/Library Mail

Special Services
- Ancillary Services
- International Ancillary Services
- Address List Services
- Caller Service
- Change-of-Address Credit Card Authentication
- Confirm
- International Reply Coupon Service
- International Business Reply Mail Service
- Money Orders
- Post Office Box Service

Negotiated Service Agreements
- HSBC North America Holdings Inc. Negotiated Service Agreement
- Bookspan Negotiated Service Agreement
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement
- Inbound International
  - Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services

Market Dominant Product Descriptions
First-Class Mail
[Reserved for Class Description]
- Single-Piece Letters/Postcards
  - [Reserved for Product Description]
- Bulk Letters/Postcards
  - [Reserved for Product Description]
- Flats
  - [Reserved for Product Description]
- Parcels
  - [Reserved for Product Description]
- Outbound Single-Piece First-Class Mail International
  - [Reserved for Product Description]
- Inbound Single-Piece First-Class Mail International
  - [Reserved for Product Description]

Standard Mail (Regular and Nonprofit)
[Reserved for Class Description]
- High Density and Saturation Letters
  - [Reserved for Product Description]
- High Density and Saturation Flats/Parcels
  - [Reserved for Product Description]
- Carrier Route
  - [Reserved for Product Description]
- Letters
  - [Reserved for Product Description]
- Flats
  - [Reserved for Product Description]
- Not Flat-Machinables (NFMs)/Parcels
  - [Reserved for Product Description]

Periodicals
[Reserved for Class Description]
- Within County Periodicals
  - [Reserved for Product Description]
- Outside County Periodicals
  - [Reserved for Product Description]

Package Services
[Reserved for Class Description]
- Single-Piece Parcel Post
  - [Reserved for Product Description]
- Inbound Surface Parcel Post (at UPU rates)
  - [Reserved for Product Description]
- Bound Printed Matter Flats
  - [Reserved for Product Description]
- Bound Printed Matter Parcels
  - [Reserved for Product Description]
- Media Mail/Library Mail
  - [Reserved for Product Description]

Special Services
[Reserved for Class Description]
- Ancillary Services
  - [Reserved for Product Description]
- Address Correction Service
  - [Reserved for Product Description]
- Applications and Mailing Permits
  - [Reserved for Product Description]
- Business Reply Mail
  - [Reserved for Product Description]
- Bulk Parcel Return Service
  - [Reserved for Product Description]
- Certified Mail
  - [Reserved for Product Description]
- Certificate of Mailing
  - [Reserved for Product Description]
- Collect on Delivery
  - [Reserved for Product Description]
- Delivery Confirmation
  - [Reserved for Product Description]
- Insurance
  - [Reserved for Product Description]
- Merchandise Return Service
  - [Reserved for Product Description]
- Parcel Airlift (PAL)
  - [Reserved for Product Description]
- Registered Mail
  - [Reserved for Product Description]
- Return Receipt
  - [Reserved for Product Description]
- Return Receipt for Merchandise
  - [Reserved for Product Description]
- Restricted Delivery
  - [Reserved for Product Description]
- Shipper-Paid Forward
  - [Reserved for Product Description]
- Signature Confirmation
  - [Reserved for Product Description]
- Special Handling
  - [Reserved for Product Description]
- Stamped Envelopes
  - [Reserved for Product Description]
- Stamped Cards
  - [Reserved for Product Description]
- Premium Stamped Stationery
  - [Reserved for Product Description]
- Premium Stamped Cards
  - [Reserved for Product Description]
- International Ancillary Services
  - [Reserved for Product Description]
- International Certificate of Mailing
  - [Reserved for Product Description]
- International Registered Mail
  - [Reserved for Product Description]
- International Return Receipt
  - [Reserved for Product Description]
- International Restricted Delivery
  - [Reserved for Product Description]
- Address List Services
  - [Reserved for Product Description]
- Caller Service
  - [Reserved for Product Description]
- Change-of-Address Credit Card Authentication
  - [Reserved for Product Description]
- Confirm
  - [Reserved for Product Description]

- International Reply Coupon Service
- [Reserved for Product Description]
- International Business Reply Mail Service
- [Reserved for Product Description]
- Money Orders
- [Reserved for Product Description]
- Post Office Box Service
- [Reserved for Product Description]

Negotiated Service Agreements

[Reserved for Class Description]

- HSBC North America Holdings Inc. Negotiated Service Agreement
- [Reserved for Product Description]
- Bookspan Negotiated Service Agreement
- [Reserved for Product Description]
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement

Part B—Competitive Products

2000 Competitive Product List

Express Mail

- Express Mail
- Outbound International Expedited Services
- Inbound International Expedited Services
  - Inbound International Expedited Services 1 (CP2008–7)
  - Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)

Priority Mail

- Priority Mail
- Outbound Priority Mail International
- Inbound Air Parcel Post (at non-UPU rates)
  - Royal Mail Group Inbound Air Parcel Post Agreement
- Inbound Air Parcel Post (at UPU rates)

Parcel Select

Parcel Return Service

International

- International Priority Airlift (IPA)
- International Surface Airlift (ISAL)
- International Direct Sacks—M—Bags
- Global Customized Shipping Services
- Inbound Surface Parcel Post (at non-UPU rates)
  - Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
- International Money Transfer Service
- International Ancillary Services

Special Services

- Premium Forwarding Service

Negotiated Service Agreements

- Domestic
  - Express Mail Contract 1 (MC2008–5)
  - Express Mail Contract 2 (MC2009–3 and CP2009–4)
  - Express Mail Contract 3 (MC2009–15 and CP2009–21)
  - Express Mail Contract 4 (MC2009–34 and CP2009–45)
  - Express Mail Contract 5 (MC2010–5 and CP2010–5)
  - Express Mail Contract 6 (MC2010–6 and CP2010–6)
  - Express Mail Contract 7 (MC2010–7 and CP2010–7)
  - Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
  - Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
  - Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
  - Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
  - Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
  - Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
  - Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
  - Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
  - Parcel Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
  - Parcel Select & Parcel Return Service Contract 2 (MC2009–40 and CP2009–61)
  - Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
  - Priority Mail Contract 1 (MC2008–8 and CP2008–26)
  - Priority Mail Contract 2 (MC2009–2 and CP2009–3)
  - Priority Mail Contract 3 (MC2009–4 and CP2009–5)
  - Priority Mail Contract 4 (MC2009–5 and CP2009–6)
  - Priority Mail Contract 5 (MC2009–21 and CP2009–26)
  - Priority Mail Contract 6 (MC2009–25 and CP2009–30)
  - Priority Mail Contract 7 (MC2009–25 and CP2009–31)
  - Priority Mail Contract 8 (MC2009–25 and CP2009–32)
  - Priority Mail Contract 9 (MC2009–25 and CP2009–33)
  - Priority Mail Contract 10 (MC2009–25 and CP2009–34)
  - Priority Mail Contract 11 (MC2009–27 and CP2009–37)
  - Priority Mail Contract 12 (MC2009–28 and CP2009–38)
  - Priority Mail Contract 13 (MC2009–29 and CP2009–39)
  - Priority Mail Contract 14 (MC2009–30 and CP2009–40)
  - Priority Mail Contract 15 (MC2009–35 and CP2009–54)
  - Priority Mail Contract 16 (MC2009–36 and CP2009–55)
  - Priority Mail Contract 17 (MC2009–37 and CP2009–56)
  - Priority Mail Contract 18 (MC2009–42 and CP2009–63)
  - Priority Mail Contract 19 (MC2010–1 and CP2010–1)
  - Priority Mail Contract 20 (MC2010–2 and CP2010–2)
  - Priority Mail Contract 21 (MC2010–3 and CP2010–3)
  - Priority Mail Contract 22 (MC2010–4 and CP2010–4)
  - Priority Mail Contract 23 (MC2010–9 and CP2010–9)
- Outbound International
  - Direct Entry Parcels Contracts
    - Direct Entry Parcels 1 (MC2009–26 and CP2009–36)
  - Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
  - Global Expedited Package Services (GEPS) Contracts
    - GEPS 1 (CP2008–5, CP2008–11, CP2008–12, CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)
    - Global Expedited Package Services 2 (CP2009–50)
  - Global Plus Contracts
    - Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)
    - Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)
- Inbound International
  - Inbound Direct Entry Contracts with Foreign Postal Administrations
    - Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and MC2008–15)
    - Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008–6 and CP2009–62)
  - International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)

Competitive Product Descriptions

- Express Mail
- [Reserved for Group Description]
- Express Mail
- [Reserved for Product Description]
- Outbound International Expedited Services
- [Reserved for Product Description]
- Inbound International Expedited Services
- [Reserved for Product Description]
- Priority
- [Reserved for Product Description]
- Priority Mail
- [Reserved for Product Description]
- Outbound Priority Mail International
- [Reserved for Product Description]
- Inbound Air Parcel Post
- [Reserved for Product Description]
- Parcel Select
- [Reserved for Group Description]
- Parcel Return Service
- [Reserved for Group Description]
- International
- [Reserved for Group Description]
- International Priority Airlift (IPA)
- [Reserved for Product Description]
- International Surface Airlift (ISAL)
- [Reserved for Prduct Description]
- International Direct Sacks—M–Bags
- [Reserved for Product Description]
- Global Customized Shipping Services
- [Reserved for Product Description]

International Money Transfer Service
[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]
International Ancillary Services
[Reserved for Product Description]
International Certificate of Mailing
[Reserved for Product Description]
International Registered Mail
[Reserved for Product Description]
International Return Receipt
[Reserved for Product Description]
International Restricted Delivery
[Reserved for Product Description]
International Insurance
[Reserved for Product Description]
Negotiated Service Agreements
[Reserved for Group Description]
Domestic
[Reserved for Product Description]
Outbound International
[Reserved for Group Description]
Part C—Glossary of Terms and Conditions [Reserved]
Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. 2010–1452 Filed 1–25–10; 8:45 am]

BILLING CODE 7710–FW–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2008–0307; FRL–8968–3]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan (SIP) revisions submitted by the State of Montana on November 1, 2006 and November 20, 2007. The revisions are to the Administrative Rules of Montana; they include minor editorial and grammatical changes, updates to the citations and references to federal and state laws and regulations, other minor changes to conform to federal regulations, and updates to links to sources of information. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on March 29, 2010 without further notice, unless EPA receives adverse comment by February 25, 2010. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2008–0307, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: dolan.kathy@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2008–0307. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 303–312–6142, *dolan.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
II. Summary of SIP Revisions
III. EPA's Review of the State of Montana's November 1, 2006 and November 20, 2007 Submittals
IV. Final Action
V. Statutory and Executive Order Reviews

Definitions

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

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

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

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

(iv) The words *State* or *Montana* mean the State of Montana, unless the context indicates otherwise.

I. General Information

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

1. *Submitting CBI.* Do not submit this information to EPA through *http://regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI

information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

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

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

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

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

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

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

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

II. Summary of SIP Revisions

A. On November 1, 2006 the State of Montana submitted formal revisions to its State Implementation Plan (SIP) (hereafter, the "2006 SIP revisions"). The 2006 SIP revisions contain amendments to the following sections of the Administrative Rules of Montana (ARM): 17.8.101, 17.8.102, 17.8.103, 17.8.302, 17.8.744, 17.8.767, 17.8.801, 17.8.802, 17.8.818, 17.8.902, 17.8.1002, 17.8.1701, 17.8.1702, 17.8.1703, 17.8.1704, 17.8.1705, 17.8.1710, 17.8.1711, 17.8.1712, and 17.8.1713.

B. On November 20, 2007 the State of Montana submitted formal revisions to its State Implementation Plan (SIP) (hereafter, the "2007 SIP revisions"). The 2007 SIP revisions contain amendments to the following sections of the ARM: 17.8.102, 17.8.103, 17.8.302(1)(d), 17.8.602, 17.8.767 with the exception of subsection (1)(c), 17.8.801, 17.8.802 with the exception of subsection (1)(d), 17.8.818, 17.8.901, 17.8.902 with the exception of subsection (1)(a), 17.8.1002 with the exception of subsection (1)(a), 17.8.1007, 17.8.1102, and 17.8.1402.

III. EPA's Review of the State of Montana's November 1, 2006 and November 20, 2007 Submittals

A. 2006 SIP Revisions

A number of the 2006 SIP revisions are strictly administrative; they make minor editorial and grammatical changes, update the citations and references to federal and state laws and regulations, and update links to sources of information. The following are the 2006 rule revisions that fall in this category: ARM sections 17.8.101, 17.8.102, and 17.8.103. All of the revisions are approvable. However, the 2007 revisions supersede the 2006 revisions to ARM sections 17.8.102 and 17.8.103. Therefore, in this action we are approving ARM section 17.8.101 from the 2006 SIP revisions, but not 17.8.102 and 103. We discuss ARM sections 17.8.102 and 103 further in the section below that addresses the 2007 SIP revisions.

The 2006 SIP revisions include changes to ARM sections 17.8.801 and 17.8.818. These changes are approvable. The revision to 17.8.801 adds the pollutant Hydrogen Sulfide (H_2S), at 10 tons per year (tpy), to the table "Pollutant and Emissions Rate" within the definition of "Significant" at ARM 17.8.801(27). This provision defines pollutant significance levels within Montana's prevention of significant deterioration (PSD) regulations, and the addition of H_2S at 10 tpy is consistent with EPA's PSD regulations. *See* 40 CFR 51.166(b)(23). The revision to 17.8.818 adds "hydrogen sulfide (H_2S)—0.2 µg/m3, one hour average" at 17.8.818(7)(a)(ix). This establishes an air quality impact level below which the State may exempt a proposed PSD major stationary source or major modification from certain monitoring requirements. This too is consistent with EPA's PSD regulations. *See* 40 CFR 51.166(i)(5). The State made additional changes to ARM sections 17.8.801 and 17.8.818 as part of the 2007 SIP revisions. We discuss these changes below.

The EPA is not taking action on the 2006 revisions to ARM sections 17.8.302, 17.8.767, 17.8.802, 17.8.902, and 17.8.1002. These revisions reference EPA's Clean Air Mercury Rule (CAMR). Because the U.S. Court of Appeals for the D.C. Circuit vacated CAMR on February 8, 2008 (*see New Jersey* v. *EPA,* 517 F.3d 574), EPA will not act on these revisions.

We are not taking action on the revisions to ARM sections 17.8.1701, 17.8.1702, 17.8.1703, 17.8.1704, 17.8.1705, 17.8.1710, 17.8.1711, 17.8.1712, 17.8.1713, and 17.8.744, which establish a system of registration of oil and gas well facilities and provide for the exclusion of eligible facilities from Montana air quality permitting requirements. These revisions will be addressed in a future action.

B. 2007 SIP Revisions

A number of the 2007 SIP revisions are strictly administrative; they make minor editorial and grammatical changes, update the citations and references to federal and state laws and regulations, and update links to sources of information. The following are the 2007 rule revisions that fall in this category: ARM sections 17.8.102, 17.8.103, 17.8.302(1)(d), 17.8.602, 17.8.801, 17.8.818, 17.8.901, 17.8.1007, and 17.8.1102. All of the revisions are approvable. As noted above, the 2007 revisions to ARM sections 17.8.102 and 103 supersede the 2006 revisions to these rules. Therefore, EPA is approving the 2007 revisions. As indicated, both the 2006 and 2007 revisions to ARM sections 17.8.801 and 17.8.818 are approvable. The 2006 revisions are substantive; the 2007 revisions are administrative. EPA is approving both revisions but is only incorporating by reference the later version of the rules, which reflect both the 2006 and 2007 revisions.

The EPA is not taking action on the 2007 revisions to ARM sections 17.8.767, 17.8.802, 17.8.902, and 17.8.1002. These revisions reference EPA's Clean Air Mercury Rule (CAMR). Because the U.S. Court of Appeals for the D.C. Circuit vacated CAMR on February 8, 2008 (*see New Jersey* v. *EPA,* 517 F.3d 574), EPA will not act on these revisions.

We are not taking action on the revision to ARM section 17.8.1402. The State has indicated that this revision may be repealed; therefore, action will not be taken at this time.

IV. Final Action

The EPA is approving revisions that the State submitted on November 1, 2006. The Montana Board of Environmental Review adopted these revisions on July 21, 2006 and they became effective on August 11, 2006. The EPA is approving the 2006 revisions to ARM sections 17.8.101, 17.8.801, and 17.8.818. The EPA is not taking action on the 2006 revisions to ARM sections 17.8.302, 17.8.744,

17.8.767, 17.8.802, 17.8.902, 17.8.1002, 17.8.1701, 17.8.1702, 17.8.1703, 17.8.1704, 17.8.1705, 17.8.1710, 17.8.1711, 17.8.1712, and 17.8.1713.

The EPA is approving revisions that the State submitted on November 20, 2007. The Montana Board of Environmental Review adopted these amendments on September 28, 2007 and they became effective on October 26, 2007. The EPA is approving the 2007 revisions to ARM sections 17.8.102, 17.8.103, 17.8.302(1)(d), 17.8.602, 17.8.801, 17.8.818, 17.8.901, 17.8.1007, and 17.8.1102. The EPA is not taking action on the 2007 revisions to ARM sections 17.8.767, 17.8.802, 17.8.902, 17.8.1002, and 17.8.1402.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments; we are merely approving administrative and other minor changes to Montana's air rules. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revisions if adverse comments are filed. This rule will be effective March 29, 2010 without further notice unless the Agency receives adverse comments by February 25, 2010. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *March 29, 2010.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register,** rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 25, 2009.

Andrew M. Gaydosh,

Acting Regional Administrator, Region 8.

■ 40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

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

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

Subpart BB—Montana

■ 2. Section 52.1370 is amended by adding paragraph (c)(68) to read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

(68) Revisions to the State Implementation plan which were submitted by the State of Montana on November 1, 2006 and November 20, 2007. The revisions are to the Administrative Rules of Montana; they make minor editorial and grammatical changes, update the citations and references to federal and state laws and regulations, make other minor changes to conform to federal regulations, and update links to sources of information.

(i) Incorporation by reference.

(A) Administrative Rules of Montana (ARM) section 17.8.101, *Definitions;* effective August 11, 2006.

(B) Administrative Rules of Montana (ARM) sections: 17.8.102, *Incorporation by Reference—Publication Dates;* 17.8.103, *Incorporation by Reference and Availability of Referenced Documents;* 17.8.302(1)(d), *Incorporation by Reference;* 17.8.602, *Incorporation by Reference;* 17.8.801, *Definitions;* 17.8.818, *Review of Major Stationary Sources and Major Modifications—Source Applicability and Exemptions;* 17.8.901, *Definitions;* 17.8.1007, *Baseline for Determining Credit for Emissions and Air Quality Offsets;* and, 17.8.1102, *Incorporation by Reference;* all effective October 26, 2007.

[FR Doc. 2010–1386 Filed 1–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0475; FRL–9104–7]

Revisions to the California State Implementation Plan, San Joaquin Valley Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the San Joaquin Valley Air Pollution Control District (SJVAPCD or District) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on July 17, 2009 and concerns volatile organic compound (VOC) emissions from steam-enhanced crude oil production well vents, aerospace coating operations, and polyester resin operations. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves local rules that regulate these emission sources and directs California to correct rule deficiencies.

DATES: *Effective Date:* This rule is effective on February 25, 2010.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2009–0475 for this action. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. Proposed Action

On July 17, 2009 (74 FR 34704), EPA proposed a limited approval and limited disapproval of the following rules that were submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVAPCD	4401	Steam-Enhanced Crude Oil Production Wells	12/14/06	05/08/07
SJVAPCD	4605	Aerospace Assembly and Component Coating Operations	09/20/07	03/07/08
SJVAPCD	4684	Polyester Resin Operations	09/20/07	03/07/08

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions do not fully satisfy requirements of section 110 and part D of the Act. The deficiencies include the following:

1. Rule 4401 authorizes the District to grant a waiver from SIP requirements, in section 6.2.4.

2. SJVAPCD has not adequately demonstrated that Rule 4605 and Rule 4684 implement RACT.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following party.

1. Scott Nester, Director of Planning, San Joaquin Valley Air Pollution Control District; letter dated and received August 17, 2009.

After the close of the comment period, we also received comments from the following party.

2. Sayed Sadredin, Executive Director/Air Pollution Control Officer of San Joaquin Valley Air Pollution Control District; letter dated August 27, 2009 and received August 31, 2009.

The comments and our responses are summarized below. Although we are not obligated to address comments submitted after the close of the comment period, we are addressing below both the District's August 17 comments and those comments in the District's August 27 letter that pertain to the rules we are acting on today.

SJVAPCD Aug. 17 Comment #1: The District stated that its staff has proposed to amend Rule 4684 to implement requirements in the September 2008 Control Techniques Guideline (CTG) for fiberglass boat manufacturing materials.

EPA Response: We appreciate SJVAPCD's efforts to promptly address RACT requirements for sources covered by the 2008 CTG for Fiberglass Boat Manufacturing Materials (2008 CTG), but we are obligated to act at this time on the submitted version of Rule 4684. In addition, we note that Rule 4684 should be revised to address RACT

requirements not only for sources covered by the 2008 CTG, but also for VOC major sources that are subject to Rule 4684 but not addressed by the 2008 CTG. *See* 74 FR 34705.

SJVAPCD Aug. 17 Comment #2: The District stated that EPA had commented that the VOC limits, emission control system efficiency, and application methods in existing Rule 4684 for non-fiberglass boat manufacturing facilities are less stringent than other air districts' rules and, therefore, constitute RACT deficiencies. The District encouraged EPA to fully approve Rule 4684 because: (1) According to District staff research, no ozone nonattainment areas in other states have specific regulations on polyester resin operations, (2) the VOC limits and emission control requirements of Rule 4684 are consistent with the California Air Resources Board's (CARB's) "Determination of Reasonably Available and Best Available Retrofit Control Technology for Polyester Resin Operations," which should define RACT requirements in the absence of a CTG for this category, and (3) although the limits in Rule 4684 are not identical to those in other California air districts' rules, those rules have been recently amended and their limits are considered beyond RACT.

EPA Response: The District's characterization of the Rule 4684 deficiencies identified in our proposed action is not entirely accurate. To clarify, we noted that Rule 4684 appears to apply to major VOC sources that are not covered by the 2008 CTG, and that the District had not demonstrated that the more stringent requirements for these types of sources identified in other California rules are not feasible in the San Joaquin Valley or otherwise adequately demonstrated that Rule 4684 implements RACT for these major sources. 74 FR 34704 at 34705.

As to the District's specific arguments in support of full approval, we do not agree that these provide a basis for full approval. First, whether or not any other states with ozone nonattainment areas have RACT rules for polyester resin operations, SJVAPCD is required to have such rules under CAA § 182(b)(2) because it regulates facilities within this source category that are major sources of VOCs. As noted in the TSD for our proposed action, the RACT rules in three of four nearby districts that SJVAPCD reviewed as part of its 2009 RACT SIP contain more stringent monomer content requirements and more stringent overall capture and control efficiency requirements than Rule 4684.[1] The District has not demonstrated that these more stringent requirements are not reasonably achievable or that the requirements in Rule 4684 implement RACT for non-CTG major VOC sources in the San Joaquin Valley (*i.e.,* sources other than fiberglass boat manufacturing facilities).

Second, we do not agree with the District's assertion that CARB's "Determination of Reasonably Available and Best Available Retrofit Control Technology for Polyester Resin Operations" (RACT and BARCT Guidance) defines RACT in the absence of a CTG for this source category. States are required to consider the latest information available in making RACT determinations and to provide supporting information with their RACT submissions to EPA.[2] This is because RACT can change over time as new technology becomes available or the cost of technology decreases.

Indeed, CARB's RACT and BARCT Guidance is dated January 8, 1991, and since then several California districts near the SJVAPCD have revised their polyester resin rules to incorporate more stringent limits. The District has not supported its evaluation of Rule 4684 with a demonstration that these more stringent requirements are not economically or technically feasible for major source polyester resin operations in the San Joaquin Valley.

Finally, we note that the more stringent monomer content and overall capture and control efficiency requirements in the South Coast Air Quality Management District (SCAQMD) and the Ventura County Air Pollution Control District (VCAPCD) polyester resin rules that SJVAPCD reviewed have been effective for many years.[3] Specifically, the monomer content limits in section (c)(2)(A) of SCAQMD's polyester resin rule (Rule 1162) became effective in 2003,[4] and the 90% overall capture and control efficiency requirement in the rule has been effective for at least 15 years.[5] The monomer content limits in VCAPCD's polyester resin rule (Rule 74.14) and the 90% overall capture and control efficiency requirement have been effective since 2005.[6] As such, we do not believe the District has adequately supported its assertion that the limits in these rules are "beyond RACT."

SJVAPCD Aug. 17 Comment #3: The District stated that its staff will review the benefits and costs of "strengthening this rule beyond RACT in the context of an attainment plan control measure."

EPA Response: We appreciate the District's efforts to strengthen these rules as part of its broader attainment goals, and we expect these efforts can proceed consistent with the CAA deadlines associated with today's final action on Rule 4684.

SJVAPCD Aug. 27 Comment #1: SJVAPCD requested that we reflect on its positive working relationship with EPA and its record of accomplishments, and stated that its enclosed responses would address most of EPA's concerns. The District stated that the San Joaquin Valley needs emission reductions as quickly as feasible and that it was, therefore, hesitant to "divert resources to unnecessary bureaucratic work associated with rulemaking projects that are not demonstrated to have significant potential for additional reductions or enforceability." The District urged that its "efforts not be delayed or hampered, and that [the District] receive a full approval for [its] regulatory efforts."

EPA Response: We appreciate the District's efforts to improve air quality in the San Joaquin Valley as expeditiously as possible. Our concerns, however, are based on CAA RACT requirements that the District is required to address in accordance with specified deadlines. These RACT requirements apply independent of the significance of the resulting emission reductions or other air quality improvement efforts. We discuss these requirements further below and in our proposal.

SJVAPCD Aug. 27 Comment #2: SJVAPCD acknowledged that EPA had proposed a limited approval/limited disapproval of Rule 4401 because of the provision that states that waiver requests are "deemed approved" by EPA if EPA does not object within 45 days. The District stated, however, that EPA

[1] *Technical Support Document For EPA's Notice of Direct Final Rulemaking On Revisions to the California State Implementation Plan: EPA's Analysis of San Joaquin Valley Unified Air Pollution Control District's Rule 4684, Polyester Resin Operations,* EPA Region IX, May 2009 (Rule 4684 TSD), at pp. 4–9.

[2] *See* 70 FR 71612 at 71655 (November 29, 2005) (Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2); *see also NRDC* v. *EPA,* 571 F. 3d 1245, 1254 (DC Cir. 2009) (holding that EPA's case-by-case approach to RACT ensures that "RACT determinations will reflect advances in technology").

[3] *See* pg. 4–349 and 4–350 of SJVAPCD's April 16, 2009 RACT Demonstration for the District's review of SCAQMD Rule 1162 and VCAPCD Rule 74.14.

[4] *See* SCAQMD Rule 1162, amended July 11, 2003. SCAQMD subsequently made other amendments to Rule 1162 that did not alter the monomer content limits. *See* SCAQMD Rule 1162 amended July 9, 2004 and SCAQMD Rule 1162 amended July 8, 2005.

[5] *See* SCAQMD Rule 1162, amended May 13, 1994.

[6] *See* VCAPCD Rule 74.14, amended April 12, 2005.

should approve Rule 4401 for two reasons. First, the District stated that precedent for this language can be found in the October 1998 "Title V Review Protocol Agreement" between the District and EPA Region IX, which states that "During this period, the EPA may approve the district's proposal either in writing, or by choosing not to provide written comments." The district stated that this language is identical to the language in Section 6.2.4 of Rule 4401, that Rule 2520 (Federally Mandated Operating Permits) also contains similar language, and that EPA had not objected to the requirements of Section 6.2.4 in Rule 4401 during the rulemaking process. Second, the District stated that "[w]hile the Clean Air Act may prohibit the District from requiring the EPA to take action, it does not preclude the EPA from agreeing to a reasonable timeframe in which to take action, as indicated by the referenced memo." The District further explained that operators need timely notification of whether their waiver requests have been approved, due to the time needed to schedule and perform expensive and time-consuming source tests, and that Rule 4401 should take these needs into account.

EPA Response: We disagree with the District's assertion that the October 1998 "Title V Review Protocol Agreement" between the District and EPA (Title V Agreement) provides precedent for the language in Rule 4401. Title V of the CAA specifically authorizes EPA to object to a title V operating permit that is not in compliance with CAA applicable requirements within 45 days after receiving a copy of the proposed permit from the state/local permitting agency. CAA § 505(b)(1); 40 CFR 70.8(c). The District refers to language in the Title V Agreement that describes the process following EPA's 45-day review period through which SJVAPCD will resolve title V objections that EPA has raised.[7] In this context, where the District has timely submitted information adequately addressing EPA's objections, EPA has agreed that the District may in some cases treat our silence as concurrence with the District's revised proposal.[8]

The CAA does not establish any such process for state/local waivers to the requirements of a federally-approved SIP. To the contrary, section 110(i) of the Act specifically prohibits EPA and the States from taking any "action modifying any requirement of an applicable implementation plan * * * with respect to any stationary source" except as otherwise authorized by the Act. Section 6.2.4 of Rule 4401 effectively allows the District to grant a waiver to federally-approved SIP requirements if EPA does not object within 45 days of receiving the District's request for concurrence. Without a process that ensures that any such waiver is granted only upon EPA approval in accordance with CAA requirements, this provision is inconsistent with the requirements of the Act and cannot be approved.

We note that the District may address these concerns by providing explicit and replicable procedures within the rule that tightly define how the District's discretion will be exercised to assure equivalent emission reductions.[9]

As to the District's comment that EPA did not object to this provision during its local rulemaking process, we regret not identifying this issue earlier but note that our failure to do so does not remove our obligation to ensure full compliance with the CAA when taking formal action on SIP submittals.

SJVAPCD Aug. 27 Comment #3: SJVAPCD acknowledged that EPA had proposed a limited approval/limited disapproval of Rule 4605 because of concerns about certain VOC coating limits, but stated that EPA should approve Rule 4605 for two reasons. First, the District stated that its staff had compared the limits in Rule 4605 to the limits in EPA's 1997 CTG for coating operations at aerospace facilities and in other California district rules, and found that (1) Rule 4605's VOC limit for Sealant (Extrudable/Rollable/Brushable) is consistent with BAAQMD's Rule 8–29, and (2) Rule 4605's limit for Sealant (Fastener) is consistent with SCAQMD's Rule 1124 and Ventura County Air Pollution Control District's Rule 74.13. Second, the District stated that it plans to amend Rule 4605 during the first quarter of 2010 to incorporate the coating types and limits contained in the 1997 CTG, and that it would also consider the additional recommendations provided in EPA's TSD in its next rule revision process.

EPA Response: EPA's 1997 CTG on Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations (1997 CTG) generally defines presumptive RACT for this activity nationwide. In our proposed action (74 FR at 34705), we noted that the District had not adequately addressed recommendations in the 1997 CTG for 19 coating categories. The District now identifies rules in neighboring districts that are consistent with Rule 4605 for two of these coating categories, but it fails to demonstrate that the CTG recommendations for those two categories are not reasonably achievable in the San Joaquin Valley. Moreover, the District fails to address the other 17 coating categories for which the 1997 CTG recommends specific limits. In order to satisfy CAA RACT requirements, the District must either demonstrate that Rule 4605 implements current-day RACT for all of these coating operations or certify, where appropriate, that certain coating operations do not occur in the San Joaquin Valley.

As to the District's statement that it plans to amend Rule 4605 during the first quarter of 2010 to incorporate the CTG recommendations and EPA's additional recommendations, we appreciate these rule improvement efforts but note that we are obligated to act at this time on the submitted version of Rule 4605.

SJVAPCD Aug. 27 Comment #4: The District acknowledged that EPA had proposed a limited approval/limited disapproval of Rule 4684 because of concerns about the resin and gel coat monomer content limits and capture and control efficiency requirements. The District stated, however, that EPA should fully approve the rule for two reasons. First, the District asserted that the rules in the other districts cited by EPA should be considered beyond RACT as those rules were recently adopted, and because there is no CTG for non-fiberglass boat manufacturing or general polyester resin fiberglass boat manufacturing. The District stated that "EPA's long-standing historical position is that in the absence of a CTG * * * the standards that have been successfully implemented in other districts or states [are] minimum RACT unless demonstrated that those standards are beyond RACT," and that the District had made such a demonstration (that the other districts' rules are beyond RACT) in its RACT analysis for Rule 4686. The District further stated that some of these rules were developed after SJVAPCD began developing Rule 4686 and, therefore,

[7] *See* "Title V Permit Review Protocol Agreement: San Joaquin Valley Unified APCD, United States Environmental Protection Agency, Region IX," October 1998.

[8] If the permitting agency fails to adequately address EPA's objection(s) within 90 days, title V authorizes EPA to issue or deny the title V permit. CAA § 505(b)(3); 40 CFR 70.8(c). The District also references SJVAPCD Rule 2520 (Federally Mandated Operating Permits), which implements title V requirements. These provisions related to the District's title V operating permit program are not relevant to our action today.

[9] *See* Guidance Document for Correcting Common VOC & Other Rule Deficiencies (A.K.A., The Little Bluebook), U.S. EPA Region IX, Revised August 21, 2001, at pg. 17.

"could not be utilized in the Rule 4686 development process."

Second, the District stated that although EPA is not calling out deficiencies related to the September 2008 fiberglass boat manufacturing CTG, the District is in the process of amending Rule 4684 to incorporate the CTG recommendations and that rule adoption is scheduled for September 17, 2009.

EPA Response: First, we disagree with the District's assertion that it has demonstrated that the more stringent limits in other districts' rules are beyond RACT. *See* response to SJVAPCD Aug. 17 Comment #2, above. Second, we also disagree with the District's statement that some of the more stringent rules in other districts were developed after the District had begun its Rule 4684 development process. The District adopted the version of Rule 4684 that we are acting on today in 2007, and the more stringent polyester resin rules that the District referenced in its 2009 RACT SIP were last modified in 2005 or earlier. *See* response to SJVAPCD Aug. 17 Comment #2, above. Finally, as to the District's statement that it is in the process of amending Rule 4684 to incorporate the CTG recommendations, we appreciate the District's ongoing rule improvement efforts and will evaluate those rule revisions when they are submitted to us for incorporation into the SIP. *See* response to SJVAPCD Aug. 17 Comment #1.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rules. This action incorporates the submitted rules into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rules. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months of the effective date of this action. Note that the submitted rules have been adopted by the San Joaquin Valley Air Pollution Control District, and EPA's final limited disapproval does not prevent the local agency from enforcing them.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals and limited approvals/limited disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this limited approval/limited disapproval action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the limited approval/limited disapproval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

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

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on *February 25, 2010.*

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *March 29, 2010.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 11, 2009.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraphs (c)(350)(i)(C)(*2*), (354)(i)(E)(*11*) and (354)(i)(E)(*12*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(350) * * *

(i) * * *

(C) * * *

(*2*) Rule 4401, "Steam-Enhanced Crude Oil Production Wells," adopted on December 14, 2006.

* * * * *

(354) * * *

(i) * * *

(E) * * *

(*11*) Rule 4605, "Aerospace Assembly and Component Coating Operations," adopted on September 20, 2007.

(*12*) 4684, "Polyester Resin Operations," adopted on September 20, 2007.

* * * * *

[FR Doc. 2010–1385 Filed 1–25–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–8113]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and

a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register.**

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 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.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
West Virginia:				
Hinton, City of, Summers County	540187	March 10, 1975, Emerg; August 1, 1979, Reg; February 3, 2010, Susp.	Feb. 3, 2010	Feb. 3, 2010.
Summers County, Unincorporated Areas.	540186	March 19, 1975, Emerg; November 5, 1980, Reg; February 3, 2010, Susp.	*do	Do.
Region IV				
Mississippi:				
Baldwyn, City of, Lee County	280134	December 2, 1974, Emerg; September 18, 1987, Reg; February 3, 2010, Susp.	do	Do.
Guntown, Town of, Lee County	280345	N/A, Emerg; August 28, 2007, Reg; February 3, 2010, Susp.	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Lauderdale County, Unincorporated Areas.	280224	May 28, 1975, Emerg; September 29, 1989, Reg; February 3, 2010, Susp.	.....do	Do.
Lee County, Unincorporated Areas	280227	February 7, 1978, Emerg; March 5, 1990, Reg; February 3, 2010, Susp.	.....do	Do.
Marion, Town of, Lauderdale County	280095	June 26, 1975, Emerg; September 29, 1989, Reg; February 3, 2010, Susp.	.....do	Do.
Meridian, City of, Lauderdale County	280096	November 19, 1971, Emerg; December 15, 1977, Reg; February 3, 2010, Susp.	.....do	Do.
Plantersville, Village of, Lee County	280099	April 4, 1975, Emerg; August 1, 1986, Reg; February 3, 2010, Susp.	.....do	Do.
Saltillo, Town of, Lee County	280261	April 24, 1975, Emerg; September 18, 1987, Reg; February 3, 2010, Susp.	.....do	Do.
Shannon, Town of, Lee County	280343	N/A, Emerg; February 26, 2009, Reg; February 3, 2010, Susp.	.....do	Do.
Tupelo, City of, Lee County	280100	March 4, 1974, Emerg; April 3, 1978, Reg; February 3, 2010, Susp.	.....do	Do.
Verona, Town of, Lee County	280262	May 6, 1975, Emerg; June 4, 1987, Reg; February 3, 2010, Susp.	.....do	Do.
Tennessee: Sweetwater, City of, Monroe County	470135	May 24, 1974, Emerg; March 18, 1986, Reg; February 3, 2010, Susp.	.....do	Do.
Region V				
Minnesota:				
Afton, City of, Washington County	275226	March 19, 1971, Emerg; April 21, 1972, Reg; February 3, 2010, Susp.	.....do	Do.
Bayport, City of, Washington County	275229	April 2, 1971, Emerg; May 12, 1972, Reg; February 3, 2010, Susp.	.....do	Do.
Birchwood Village, City of, Washington County.	270720	July 9, 1979, Emerg; June 8, 1984, Reg; February 3, 2010, Susp.	.....do	Do.
Cottage Grove, City of, Washington County.	270502	May 12, 1972, Emerg; April 30, 1976, Reg; February 3, 2010, Susp.	.....do	Do.
Dellwood, City of, Washington County ..	270694	January 16, 1978, Emerg; December 26, 1978, Reg; February 3, 2010, Susp.	.....do	Do.
Grant, City of, Washington County	270780	N/A, Emerg; July 3, 2003, Reg; February 3, 2010, Susp.	.....do	Do.
Hastings, City of, Washington County ..	270105	March 9, 1973, Emerg; July 16, 1980, Reg; February 3, 2010, Susp.	.....do	Do.
Hugo, City of, Washington County	270504	June 20, 1974, Emerg; September 29, 1978, Reg; February 3, 2010, Susp.	.....do	Do.
Lake Elmo, City of, Washington County	270505	August 18, 1972, Emerg; July 2, 1979, Reg; February 3, 2010, Susp.	.....do	Do.
Lake Saint Croix Beach, City of, Washington County.	275240	March 19, 1971, Emerg; February 19, 1972, Reg; February 3, 2010, Susp.	.....do	Do.
Lakeland Shores, City of, Washington County.	275239	April 9, 1971, Emerg; April 28, 1972, Reg; February 3, 2010, Susp.	.....do	Do.
Lakeland, City of, Washington County ..	275238	April 9, 1971, Emerg; February 9, 1972, Reg; February 3, 2010, Susp.	.....do	Do.
Mahtomedi, City of, Washington County	270698	April 30, 1979, Emerg; June 22, 1984, Reg; February 3, 2010, Susp.	.....do	Do.
Marine on Saint Croix, City of, Washington County.	270509	September 12, 1975, Emerg; September 27, 1985, Reg; February 3, 2010, Susp.	.....do	Do.
Newport, City of, Washington County ...	270510	February 15, 1974, Emerg; July 2, 1980, Reg; February 3, 2010, Susp.	.....do	Do.
Oakdale, City of, Washington County ...	270511	April 18, 1975, Emerg; December 26, 1978, Reg; February 3, 2010, Susp.	.....do	Do.
Scandia, City of, Washington County ...	270582	N/A, Emerg; August 12, 2008, Reg; February 3, 2010, Susp.	.....do	Do.
Saint Mary's Point, City of, Washington County.	275247	March 19, 1971, Emerg; February 25, 1972, Reg; February 3, 2010, Susp.	.....do	Do.
Saint Paul Park, City of, Washington County.	270514	September 11, 1974, Emerg; June 18, 1980, Reg; February 3, 2010, Susp.	.....do	Do.
Stillwater, City of, Washington County ..	275249	November 5, 1971, Emerg; March 16, 1973, Reg; February 3, 2010, Susp.	.....do	Do.
Washington County, Unincorporated Areas.	270499	April 30, 1971, Emerg; May 17, 1982, Reg; February 3, 2010, Susp.	.....do	Do.
Woodbury, City of, Washington County	270699	May 8, 2001, Emerg; N/A, Reg; February 3, 2010, Susp.	.....do	Do.
Ohio:				
Eastlake, City of, Lake County	390313	February 4, 1972, Emerg; February 18, 1981, Reg; February 3, 2010, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Fairport Harbor, Village of, Lake County	390314	N/A, Emerg; September 13, 2006, Reg; February 3, 2010, Susp.	.....do	Do.
Grand River, Village of, Lake County ...	390315	September 25, 1975, Emerg; July 16, 1979, Reg; February 3, 2010, Susp.	.....do	Do.
Kirtland Hills, Village of, Lake County ...	390810	March 17, 1977, Emerg; October 5, 1984, Reg; February 3, 2010, Susp.	.....do	Do.
Kirtland, City of, Lake County	390616	October 27, 1976, Emerg; February 1, 1980, Reg; February 3, 2010, Susp.	.....do	Do.
Lake County, Unincorporated Areas	390771	October 22, 1975, Emerg; January 2, 1981, Reg; February 3, 2010, Susp.	.....do	Do.
Lakeline, Village of, Lake County	390888	May 27, 1988, Emerg; August 4, 1988, Reg; February 3, 2010, Susp.	.....do	Do.
Madison, Village of, Lake County	390316	August 26, 1975, Emerg; December 4, 1979, Reg; February 3, 2010, Susp.	.....do	Do.
Mentor, City of, Lake County	390317	December 29, 1972, Emerg; December 1, 1977, Reg; February 3, 2010, Susp.	.....do	Do.
North Perry, Village of, Lake County	390742	March 19, 1976, Emerg; July 16, 1979, Reg; February 3, 2010, Susp.	.....do	Do.
Painesville, City of, Lake County	390319	December 30, 1971, Emerg; February 2, 1977, Reg; February 3, 2010, Susp.	.....do	Do.
Perry, Village of, Lake County	390320	June 11, 1975, Emerg; December 15, 1978, Reg; February 3, 2010, Susp.	.....do	Do.
Timberlake, Village of, Lake County	390890	May 27, 1988, Emerg; August 4, 1988, Reg; February 3, 2010, Susp.	.....do	Do.
Waite Hill, Village of, Lake County	390649	December 21, 1978, Emerg; August 1, 1979, Reg; February 3, 2010, Susp.	.....do	Do.
Wickliffe, City of, Lake County	390321	August 9, 1976, Emerg; January 2, 1980, Reg; February 3, 2010, Susp.	.....do	Do.
Willoughby, City of, Lake County	390322	June 12, 1975, Emerg; January 16, 1981, Reg; February 3, 2010, Susp.	.....do	Do.
Willowick, City of, Lake County	390324	February 18, 1976, Emerg; December 4, 1979, Reg; February 3, 2010, Susp.	.....do	Do.
Wisconsin:				
Berlin, City of, Green Lake County	550166	September 26, 1973, Emerg; September 30, 1977, Reg; February 3, 2010, Susp.	.....do	Do.
Green Lake, City of, Green Lake County.	550167	May 16, 1975, Emerg; September 27, 1985, Reg; February 3, 2010, Susp.	.....do	Do.
Ladysmith, City of, Rusk County	550375	February 14, 1974, Emerg; September 1, 1978, Reg; February 3, 2010, Susp.	.....do	Do.
Markesan, City of, Green Lake County	550169	June 9, 1975, Emerg; July 2, 2003, Reg; February 3, 2010, Susp.	.....do	Do.
Princeton, City of, Green Lake County	550171	June 26, 1975, Emerg; June 15, 1988, Reg; February 3, 2010, Susp.	.....do	Do.
Green Lake County, Unincorporated Areas.	550165	March 10, 1972, Emerg; March 1, 1978, Reg; February 3, 2010, Susp.	.....do	Do.
Rusk County, Unincorporated Areas	550602	May 31, 1988, Emerg; May 31, 1988, Reg; February 3, 2010, Susp.	.....do	Do.
Bruce, Village of, Rusk County	550370	November 26, 1974, Emerg; September 1, 1986, Reg; February 3, 2010, Susp.	.....do	Do.
Hawkins, Village of, Rusk County	550373	August 30, 1974, Emerg; July 15, 1988, Reg; February 3, 2010, Susp.	.....do	Do.
Ingram, Village of, Rusk County	550374	July 11, 1979, Emerg; January 2, 1987, Reg; February 3, 2010, Susp.	.....do	Do.
Kingston, Village of, Green Lake County.	550168	April 10, 1975, Emerg; September 1, 1986, Reg; February 3, 2010, Susp.	.....do	Do.
Marquette, Village of, Green Lake County.	550170	April 28, 2008, Emerg; N/A, Reg; February 3, 2010, Susp.	.....do	Do.
Sheldon, Village of, Rusk County	550376	July 18, 1975, Emerg; September 27, 1985, Reg; February 3, 2010, Susp.	.....do	Do.
Tony, Village of, Rusk County	550377	July 22, 1975, Emerg; September 16, 1988, Reg; February 3, 2010, Susp.	.....do	Do.
Region VI				
Texas:				
Burkburnett, City of, Wichita County	480658	February 7, 1975, Emerg; December 15, 1982, Reg; February 3, 2010, Susp.	.....do	Do.
Iowa Park, City of, Wichita County	480660	July 9, 1975, Emerg; December 15, 1982, Reg; February 3, 2010, Susp.	.....do	Do.
Lakeside City, City of, Archer and Wichita Counties.	481496	October 23, 1990, Emerg; April 1, 1991, Reg; February 3, 2010, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Palestine, City of, Anderson County	480004	August 19, 1975, Emerg; February 18, 1981, Reg; February 3, 2010, Susp.	.....do	Do.
Anderson County, Unincorporated Areas.	480001	January 24, 1992, Emerg; May 1, 1992, Reg; February 3, 2010, Susp.	.....do	Do.
Region VII				
Kansas:				
Burlingame, City of, Osage County	200249	April 14, 2003, Emerg; N/A, Reg; February 3, 2010, Susp.	.....do	Do.
Carbondale, City of, Osage County	200250	August 7, 1975, Emerg; March 4, 1988, Reg; February 3, 2010, Susp.	.....do	Do.
Lyndon, City of, Osage County	200251	July 15, 1975, Emerg; June 3, 1986, Reg; February 3, 2010, Susp.	.....do	Do.
Osage County, Unincorporated Areas ..	200601	February 11, 2005, Emerg; N/A, Reg; February 3, 2010, Susp.	.....do	Do.
Overbrook, City of, Osage County	200546	N/A, Emerg; January 10, 2008, Reg; February 3, 2010, Susp.	.....do	Do.
Quenemo, City of, Osage County	200253	July 6, 1976, Emerg; September 1, 1990, Reg; February 3, 2010, Susp.	.....do	Do.
Region X				
Alaska:				
Togiak, City of, Dillingham Census Area	020090	January 17, 1997, Emerg; May 21, 2009, Reg; February 3, 2010, Susp.	.....do	Do.
Lake and Peninsula Borough, Lake and Peninsula Borough.	025063	March 4, 2004, Emerg; N/A, Reg; February 3, 2010, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: January 15, 2010.

Sandra K. Knight,

Deputy Assistant Administrator for Mitigation Department of Homeland Security Federal Emergency Management Agency.

[FR Doc. 2010–1414 Filed 1–25–10; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060418103–6181–02]

RIN 0648–XT98

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Commercial Period 2 Quota Harvested

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

ACTION: Temporary rule; Closure of spiny dogfish fishery.

SUMMARY: NMFS announces that the spiny dogfish commercial quota available to the coastal states from Maine through Florida for the second semi-annual quota period, November 1, 2009 — April 30, 2010, has been harvested. Therefore, effective 0001 hours, January 26, 2010, federally permitted spiny dogfish vessels may not fish for, possess, transfer, or land spiny dogfish until May 1, 2010, when the Period 1 quota becomes available. Regulations governing the spiny dogfish fishery require publication of this notification to advise the coastal states from Maine through Florida that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no Federal commercial quota is available for landing spiny dogfish in these states. This action is necessary to prevent the fishery from exceeding its Period 2 quota and to allow for effective management of this stock.

DATES: Quota Period 2 for the spiny dogfish fishery is closed effective at 0001 hr local time, January 26, 2010, through 2400 hr local time April 30, 2010. Effective January 26, 2010, federally permitted dealers are also advised that they may not purchase spiny dogfish from federally permitted spiny dogfish vessels.

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman at (978) 675–2179, or *Lindsey.Feldman@noaa.gov*.

SUPPLEMENTARY INFORMATION: Regulations governing the spiny dogfish fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota, which is allocated into two quota periods based upon percentages specified in the fishery management plan. The commercial quota is distributed to the coastal states from Maine through Florida, as described in § 648.230.

The initial total commercial quota for spiny dogfish for the 2009 fishing year is 12 million lb (5,443.11 mt) (74 FR 20230, May 1, 2009). The commercial quota is allocated into two periods (May 1 through October 31, and November 1 through April 30). Vessel possession limits are intended to preclude directed fishing, and they are set at 3,000 lb (1.36 mt) for both Quota Periods 1 and 2. Quota Period 1 is allocated 6,948,000 lb (3,151.56 mt), and Quota Period 2 is allocated 5,052,000 lb (2,291.55 mt) of the commercial quota. The total quota cannot be exceeded, so landings in excess of the amount allocated to Period 1 have the effect of reducing the quota available to the fishery during Period 2.

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial spiny dogfish quota for each quota period and, based upon dealer reports, state data, and other available information, determines when the total commercial quota will be harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the Federal spiny dogfish commercial quota has been harvested and no Federal

commercial quota is available for landing spiny dogfish for the remainder of that quota period.

Section 648.4(b) provides that Federal spiny dogfish permit holders agree, as a condition of the permit, not to land spiny dogfish in any state after NMFS has published notification in the **Federal Register** that the commercial quota has been harvested and that no commercial quota for the spiny dogfish fishery is available. Therefore, effective 0001 hr local time, January 26, 2010, landings of spiny dogfish in coastal states from Maine through Florida by vessels holding commercial Federal fisheries permits will be prohibited through April 30, 2010, 2400 hr local time. The 2010 Period 1 quota will be available for commercial spiny dogfish harvest on May 1, 2010. Effective January 26, 2010, federally permitted dealers are also advised that they may not purchase spiny dogfish from vessels issued Federal spiny dogfish permits that land in coastal states from Maine through Florida.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest. This action closes the spiny dogfish fishery until May 1, 2010, under current regulations. The regulations at § 648.21 require such action to ensure that spiny dogfish vessels do not exceed the 2009 TAC. Data indicating the spiny dogfish fleet will have landed the 2009 TAC have only recently become available. If implementation of this closure is delayed to solicit prior public comment, the quota for this year will be exceeded, thereby undermining the conservation objectives of the FMP. The AA further finds, pursuant to 5 U.S.C. 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 21, 2010.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–1479 Filed 1–21–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 16
Tuesday, January 26, 2010

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1730

RIN 0572–ZA00

Emergency Restoration Plan (ERP)

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Rural Utilities Service (RUS) is proposing to amend the requirements established for Emergency Restoration Plans (ERPs), currently mandated for all borrowers, to include compliance with the requirements established by the Federal Emergency Management Agency (FEMA) for public assistance grant eligibility in the event of a declared disaster. This amendment will ensure that RUS borrower's maintain their eligibility for financial aid from FEMA in the event they incur costs for disaster related system repair and restoration by including FEMA requirements in their ERPs.

DATES: Written comments must be received by RUS no later than March 29, 2010.

ADDRESSES: Submit comments by either of the following methods: *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and, in the lower "Search Regulations and Federal Actions" box, select "Rural Utilities Service" from the agency dropdown menu, then click on "Submit." In the Docket ID column, select RUS–09–Electric-0003 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

Postal Mail/Commercial Delivery: Please send your comments addressed to Michele L. Brooks, Director, Program Development and Regulatory Analysis, USDA–Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1522, Room 5159, Washington, DC 20250–1522. Please state that your comment refers to Docket No. RUS–09–Agency–0003.

Other Information: Additional information about Rural Development and its programs is available on the Internet at *http://www.rurdev.usda.gov/index.html.*

FOR FURTHER INFORMATION CONTACT: Donald Junta, USDA–Rural Utilities Service, 1400 Independence Avenue, SW., Stop 1569, Washington, DC 20250–1569, telephone (202) 720–1900 or e-mail to *donald.junta@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325 or at *http://www.cfda.gov.*

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled, "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034).

Information Collection and Recordkeeping Requirements

The information collection burden associated with this rulemaking is approved under OMB control number 0572–0140. This proposed rule contains no additional information collection or recordkeeping requirements under OMB control number 0572–0140 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

National Environmental Policy Act Certification

The Agency has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Regulatory Flexibility Act Certification

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since RUS is not required by 5 U.S.C. 551 *et seq.* or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments for the private sector. Thus, this rule is not subject to the requirements of §§ 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The Agency has determined that this proposed rule meets the applicable standards in § 3 of the Executive Order.

Background

The Agency published a final rule on October 12, 2004, at 69 FR 60541 requiring all borrowers to maintain an Emergency Response Plan (ERP) that details how the borrower will restore its system in the event of a system-wide outage resulting from a major natural or manmade disaster or other causes. This ERP requirement was not entirely new to the borrowers, as RUS had recommended similar "plans" in the past. However, the need for an ERP requirement at that time was catalyzed by increased sensitivities relating to homeland security. It has subsequently come to the Agency's attention that audits by FEMA performed in recent years for FEMA's public assistance grant program have shown that our borrowers have not always followed the policies and procedures set forth by FEMA for

disaster related repairs and restoration. FEMA recently created a draft document titled "FEMA Disaster Assistance Fact Sheet 9580.6 (Electric Utility Repair (Public and Private Nonprofit)). This document contains sections on contracting, conductor replacement, hazard mitigation, and repair of collateral damage that outline FEMA requirements in these areas. When FEMA denies grant relief there is an adverse impact on the financial health of RUS borrowers and increased costs to the rural ratepayer. Accordingly, the Agency proposes to amend the ERP regulatory requirements to add that the ERP reflect compliance with all requirements imposed by FEMA for reimbursement of the cost of repairs and restoration of the borrower's electric system incurred as the result of a declared disaster.

List of Subjects

Electric power; Loan program—energy; Reporting and recordkeeping requirements; Rural areas.

For reasons set forth in the preamble, the Agency proposes to amend 7 CFR, Chapter XVII, part 1730 as follows:

PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE

1. The authority citation for part 1730 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.*

2. Amend § 1730.28 by adding a new paragraph (k) to read as follows:

§ 1730.28 Emergency Restoration Plan (ERP).

* * * * *

(k) The ERP must comply with all requirements imposed by FEMA for reimbursement by FEMA of repairs and restoration of electrical systems in cases where the service territory falls within a declared disaster area.

Dated: January 15, 2010.

Jonathan Adelstein,

Administrator, Rural Utilities Service.

[FR Doc. 2010–1401 Filed 1–25–10; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–61379; File No. S7–03–10]

RIN 3235–AK53

Risk Management Controls for Brokers or Dealers With Market Access

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission" or "SEC") is proposing for comment new Rule 15c3–5 under the Securities Exchange Act of 1934 ("Exchange Act") that would require brokers or dealers with access to trading directly on an exchange or alternative trading system ("ATS"), including those providing sponsored or direct market access to customers or other persons, to implement risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. Given the increased speed and automation of trading on securities exchanges and ATSs today, and the growing popularity of sponsored or direct market access arrangements where broker-dealers allow customers to trade in those markets electronically using the broker-dealers' market participant identifiers, the Commission is concerned that the various financial and regulatory risks that arise in connection with such access may not be appropriately and effectively controlled by all broker-dealers. The Commission believes it is critical that broker-dealers, which under the current regulatory structure are the only entities that may be members of exchanges and, as a practical matter, constitute the majority of subscribers to ATSs, appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system.

DATES: Comments should be received on or before March 29, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. S7–03–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. S7–03–10. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Marc F. McKayle, Special Counsel, at (202) 551–5633; Theodore S. Venuti, Special Counsel, at (202) 551–5658; and Daniel Gien, Attorney, at (202) 551–5747, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission has long recognized that beneficial innovations in trading and technology can significantly improve the efficiency and quality of our nation's securities markets. At the same time, the Commission must ensure that the regulatory framework keeps pace with market developments and effectively addresses any emerging risks. In recent years, the development and

growth of automated electronic trading has allowed ever increasing volumes of securities transactions across the multitude of trading systems that constitute the U.S. national market system. In fact, much of the order flow in today's marketplace is typified by high-speed, high-volume, automated algorithmic trading, and orders are routed for execution in milliseconds or even microseconds.

Over the past decade, the proliferation of sophisticated, high-speed trading technology has changed the way broker-dealers trade for their own accounts and as agent for their customers.[1] In addition, customers—particularly sophisticated institutions—have themselves begun using technological tools to place orders and trade on markets with little or no substantive intermediation by their broker-dealers. This, in turn, has given rise to the increased use and reliance on "direct market access" or "sponsored access" arrangements.[2] Under these arrangements, the broker-dealer allows its customer—whether an institution such as a hedge fund, mutual fund, bank or insurance company, an individual, or another broker-dealer—to use the broker-dealer's market participant identifier ("MPID") or other mechanism for the purposes of electronically accessing the exchange or ATS. With "direct market access," [3] as commonly understood, the customer's orders flow through the broker-dealer's systems before passing into the markets, while with "sponsored access" [4] the customer's orders flow directly into the markets without first passing through the broker-dealer's systems. In all cases, however, whether the broker-dealer is trading for its own account, is trading for customers through more traditionally intermediated brokerage arrangements, or is allowing customers direct market access or sponsored access, the broker-dealer with market access [5] is legally responsible for all trading activity that occurs under its MPID.[6]

Certain market participants may find the wide range of access arrangements beneficial. For instance, facilitating electronic access to markets can provide broker-dealers, as well as exchanges and ATSs, opportunities to compete for greater volumes and a wider variety of order flow. For a broker-dealer's customers, which could include hedge funds, institutional investors, individual investors, and other broker-dealers, such arrangements may reduce latencies and facilitate more rapid trading, help preserve the confidentiality of sophisticated, proprietary trading strategies, and reduce trading costs by lowering operational costs,[7] commissions, and exchange fees.[8]

Current self-regulatory organization ("SRO") rules and interpretations governing electronic access to markets have sought to address the risks of this activity, as discussed below. However, the Commission preliminarily believes that more comprehensive and effective standards that apply consistently across the markets are needed to effectively manage the financial, regulatory, and other risks, such as legal and operational risks, associated with market access. These risks—whether they involve the potential breach of a credit or capital limit, the submission of erroneous orders as a result of computer malfunction or human error, the failure to comply with SEC or exchange trading rules, the failure to detect illegal conduct, or otherwise—are present whenever a broker-dealer trades as a member of an exchange or subscriber to an ATS, whether for its own proprietary account or as agent for its customers, including traditional agency brokerage and through direct market access or sponsored access arrangements. Accordingly, to effectively address these risks and the vulnerability they present to the U.S. national market system, the Commission has designed the proposed rule to apply broadly to all access to trading on an exchange or ATS provided directly by a broker-dealer.[9]

The Commission, however, is particularly concerned about the quality of broker-dealer risk controls in sponsored access arrangements, where the customer order flow does not pass through the broker-dealer's systems prior to entry on an exchange or ATS. The Commission understands that, in some cases, the broker-dealer providing sponsored access may not utilize any pre-trade risk management controls (*i.e.,* "unfiltered" or "naked" access),[10] and thus could be unaware of the trading activity occurring under its market identifier and have no mechanism to control it. The Commission also understands that some broker-dealers providing sponsored access may simply rely on assurances from their customers that appropriate risk controls are in place.

Appropriate controls to manage financial and regulatory risk for all forms of market access are essential to assure the integrity of the broker-dealer, the markets, and the financial system. The Commission preliminarily believes that risk management controls and supervisory procedures that are not applied on a pre-trade basis or that are not under the exclusive control of the broker-dealer are inadequate to effectively address the risks of market access arrangements, and pose a particularly significant vulnerability in the U.S. national market system.

The securities industry itself has begun to recognize the risks associated

[1] The Commission notes that high frequency trading has been estimated to account for more than 60 percent of the U.S. equities market volume. *See, e.g.,* Nina Mehta, *Naked Access Bashed at Roundtable,* Trader's Magazine, August 6, 2009 (citing a report by Aite Group).

[2] It has been reported that sponsored access trading volume accounts for 50 percent of overall average daily trading volume in the U.S. equities market. *See, e.g.,* Carol E. Curtis, *Aite: More Oversight Inevitable for Sponsored Access,* Securities Industry News, December 14, 2009 (citing a report by Aite Group). In addition, sponsored access has been reported to account for 15 percent of Nasdaq volume. *See, e.g.,* Nina Mehta, *Sponsored Access Comes of Age,* Traders Magazine, February 11, 2009 (quoting Brian Hyndman, Senior Vice President for Transaction Services, Nasdaq OMX Group, Inc. "[direct sponsored access to customers is] a small percentage of our overall customer base, but it could be in excess of 15 percent of our overall volume.").

[3] Generally, direct market access refers to an arrangement whereby a broker-dealer permits customers to enter orders into a trading center but such orders are filtered through the broker-dealer's trading systems prior to reaching the trading center. *See, e.g.,* Nasdaq Rule 4611(d)(1)(B).

[4] Generally, sponsored access refers to an arrangement whereby a broker-dealer permits its customers to enter orders into a trading center that bypass the broker-dealer's trading system and are routed directly to a trading market via a dedicated port, in some cases supported by a service bureau or other third party technology provider. *See, e.g.,* Nasdaq Rule 4611(d)(1)(A). "Unfiltered" or "naked" access is generally understood to be a subset of sponsored access where pre-trade filters or controls are not applied to orders before such orders are submitted to an exchange or ATS. The Commission notes that the proposed rule would effectively prohibit any access to trading on an exchange or ATS, whether sponsored or otherwise, where pre-trade controls are not applied.

[5] Under Proposed Rule 15c3–5(a)(1), the term "market access" is defined as access to trading in securities on an exchange or ATS as a result of being a member or subscriber of the exchange or ATS, respectively. *See infra* Section III.C.

[6] *See, e.g.,* NYSE IM–89–6 (January 25, 1989); and Securities Exchange Act Release No. 40354 (August 24, 1998), 63 FR 46264 (August 31, 1998) (NASD NTM–98–66).

[7] For example, broker-dealers may receive market access from other broker-dealers to an exchange where they do not have a membership.

[8] The Commission notes that exchanges offer various discounts on transaction fees that are based on the volume of transactions by a member firm. *See, e.g.,* Nasdaq Rule 7018 and NYSE Arca, Inc. ("NYSE Arca") Fee Schedule. Exchange members may use access arrangements as a means to aggregate order flow from multiple market participants under one MPID to achieve higher transaction volume and thereby qualify for more favorable pricing tiers.

[9] Proposed Rule 15c3–5 would not apply to non-broker-dealers, including non-broker-dealers that are subscribers of an ATS.

[10] It has been reported that "unfiltered" access accounts for an estimated 38 percent of the average daily volume of the U.S. stock market. *See, e.g.,* Scott Patterson, *Big Slice of Market Is Going "Naked,"* Wall Street Journal, December 14, 2009 (citing a report by Aite Group).

with sponsored access, and to call for guidelines on appropriate credit and risk controls in order to avert a potential "disaster scenario."[11] Today, order placement rates can exceed 1,000 orders per second with the use of high-speed, automated algorithms.[12] If, for example, an algorithm such as this malfunctioned and placed repetitive orders with an average size of 300 shares and an average price of $20, a two-minute delay in the detection of the problem could result in the entry of, for example, 120,000 orders valued at $720 million. In sponsored access arrangements, as well as other access arrangements, appropriate pre-trade credit and risk controls could prevent this outcome from occurring by blocking unintended orders from being routed to an exchange or ATS.

Incidents involving algorithmic or other trading errors in connection with market access occur with some regularity.[13] For example, it was reported that, on September 30, 2008, trading in Google became extremely volatile toward the end of the day, dropping 93% in value at one point, due to an influx of erroneous orders onto an exchange from a single market participant. As a result, Nasdaq had to cancel numerous trades, and adjust the closing price for Google and the closing value for the Nasdaq 100 Index.[14] In addition, it was reported that, in September 2009, Southwest Securities announced a $6.3 million quarterly loss resulting from deficient market access controls with respect to one of its correspondent brokers that vastly exceeded its credit limits. Despite receiving intra-day alerts from the exchange, Southwest Securities' controls proved insufficient to allow it to respond in a timely manner, and trading by the correspondent continued for the rest of the day, resulting in a significant loss.[15] Another example, although not in the U.S., which highlights the need for appropriate controls in connection with market access occurred in December 2005, when Mizuho Securities, one of Japan's largest brokerage firms, sustained a significant loss due to a manual order entry error that resulted in a trade that, under the applicable exchange rules, could not be canceled. Specifically, it was reported that a trader at Mizuho Securities intended to enter a customer sell order for one share of a security at price of 610,000 Yen, but the numbers were mistakenly transposed and an order to sell 610,000 shares of the security at price of one Yen was entered instead.[16] A system-driven, pre-trade control reasonably designed to reject orders that are not reasonably related to the quoted price of the security, would have prevented this order from reaching the market. Most recently, on January 4, 2010, it was reported that shares of Rambus, Inc. suffered an intra-day price drop of approximately thirty-five percent due to erroneous trades causing stock and options exchanges to break trades.[17]

While incidents such as these involving trading errors in connection with market access occur with some regularity, the Commission also is concerned about preventing any potentially more severe, widespread incidents that could arise as a result of inadequate risk controls on market access. As trading in the U.S. securities markets has become more automated and high-speed trading more prevalent, the potential impact of a trading error or a rapid series of errors, caused by a computer or human error, or a malicious act, has become more severe. The Commission believes it must be proactive in addressing these concerns, by proposing requirements designed to help assure that broker-dealers that provide access to markets implement effective controls to minimize the likelihood of severe events that could have systemic implications.

As discussed in Section II below, the SROs have, over time, issued a variety of guidance and rules that, among other things, address proper risk controls by broker-dealers providing electronic access to the securities markets. In addition, the Commission has just approved via delegated authority a new Nasdaq rule that requires broker-dealers offering direct market access or sponsored access to Nasdaq to establish controls regarding the associated financial and regulatory risks, and to obtain a variety of contractual commitments from sponsored access customers.[18] Although these rules and guidance, and particularly Nasdaq's new rule, have been a step in the right direction, as discussed throughout this release, the Commission preliminarily believes that more should be done to assure that comprehensive and effective risk management controls on market access are imposed by broker-dealers whether they are trading on Nasdaq or another exchange or ATS.

Proposed Rule 15c3–5 would require a broker or dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its MPID or otherwise,[19] to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks, such as legal and operational risks, related to market access. The proposed rule would apply to trading in all securities on an exchange or ATS, including equities, options, exchange-traded funds, and debt securities. Specifically, the proposed rule would require that brokers or dealers with access to trading securities on an exchange or ATS, as a result of being a member or subscriber thereof, establish, document, and maintain a system of risk management controls and supervisory procedures that, among other things, are reasonably designed to (1) systematically limit the financial exposure of the broker or dealer that could arise as a result of market access, and (2) ensure compliance with all regulatory requirements that are applicable in connection with market

[11] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Ann Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), February 26, 2009. In commenting on a NASDAQ Stock Exchange LLC ("Nasdaq") proposed rule change to establish a new Nasdaq market access rule, SIFMA urged that "without clear guidelines for the establishment and maintenance of both counterparty-specific and enterprise-wide credit and risk controls * * * some [broker-dealers] may allow * * * trad[ing] well in excess of [a] client's traditional risk limits as well as the [broker-dealer's] own capital maintenance requirements;" and concluded that such unencumbered trading activity and market access could lead to a potential "disaster scenario."

[12] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from John Jacobs, Director of Operations, Lime Brokerage LLC, February 17, 2009.

[13] For example, information from Nasdaq indicates that in 2008 and 2009 Nasdaq granted approximately 4,000 requests and approximately 1,600 requests to break trades as erroneous trades, respectively.

[14] Ben Rooney, *Google Price Corrected After Trading Snafu,* CNNMoney.com, September 30, 2008, *http://money.cnn.com/2008/09/30/news/companies/google_nasdaq/?postversion=2008093019* ("Google Trading Incident").

[15] John Hintze, *Risk Revealed in Post-Trade Monitoring,* Securities Industry News, September 8, 2009 ("SWS Trading Incident").

[16] *Erroneous Trade to Cost Japan's Mizuho Securities at Least $225 Million,* Associated Press, December 8, 2005 ("Mizuho Trading Incident").

[17] *See* Whitney Kisling and Ian King, *Rambus Trades Cancelled by Exchanges on Error Rule,* BusinessWeek, January 4, 2010, *http://www.businessweek.com/news/2010-01-04/rambus-trading-under-investigation-as-potential-error-update1-.html* (stating "[a] series of Rambus Inc. trades that were executed about $5 below today's average price were canceled under rules that govern stock transactions that are determined to be 'clearly erroneous.'" ("Rambus Trading Incident").

[18] *See* Securities Exchange Act Release No. 61345 (January 13, 2010) (SR–NASDAQ–2008–104) ("Nasdaq Market Access Approval Order"), discussed in greater detail in the Appendix.

[19] The Commission notes that brokers-dealers typically access exchanges and ATSs through the use of unique MPIDs or other identifiers, which are assigned by the market.

access. The required financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous. The required regulatory risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that fail to comply with any regulatory requirements that must be satisfied on a pre-order entry basis, prevent the entry of orders that the broker-dealer or customer is restricted from trading, restrict market access technology and systems to authorized persons, and assure appropriate surveillance personnel receive immediate post-trade execution reports. For instance, such systems would block orders that do not comply with exchange trading rules relating to special order types and odd-lot orders, among others.[20] The requirement that a broker-dealer's financial and regulatory risk management controls and procedures be reasonably designed to prevent the entry of orders that fail to comply with the specified conditions would necessarily require the controls be applied on an automated, pre-trade basis before orders route to an exchange or ATS. This requirement would effectively prohibit the practice of "unfiltered" or "naked" access to an exchange or ATS.

The risk management controls and supervisory procedures required by Proposed Rule 15c3–5 must be under the direct and exclusive control of the broker or dealer with market access. In addition, a broker or dealer with market access would be required to establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures required by Proposed Rule 15c3–5 and for promptly addressing any issues. Among other things, the broker or dealer would be required to review, no less frequently than annually and in accordance with written procedures, the business activity of the broker or dealer in connection with market access to assure the overall effectiveness of such risk management controls and supervisory procedures. The broker-dealer also would be required to document that review. When establishing the specifics of this regular review, the Commission expects that each broker or dealer with market access would establish written procedures that are effective to provide that the broker-dealer's controls and procedures are adjusted, as necessary, to assure their continued effectiveness in light of any changes in the broker-dealer's business or weaknesses that have been revealed. Finally, the Chief Executive Officer (or equivalent officer) of the broker or dealer would be required, on an annual basis, to certify that such risk management controls and supervisory procedures comply with Proposed Rule 15c3–5, and that the regular review described above has been conducted.

The Commission believes that Proposed Rule 15c3–5 would reduce the risks faced by broker-dealers, as well as the markets and the financial system as a whole, as a result of various market access arrangements, by requiring effective financial and regulatory risk management controls to be implemented on a market-wide basis. These financial and regulatory risk management controls should reduce risks associated with market access and thereby enhance market integrity and investor protection in the securities markets.[21] Proposed Rule 15c3–5 is intended to complement and bolster existing rules and guidance issued by the exchanges and the Financial Industry Regulatory Authority ("FINRA") with respect to market access. Moreover, by establishing a single set of broker-dealer obligations with respect to market access risk management controls across markets, the proposed rule would provide uniform standards that would be interpreted and enforced in a consistent manner and, as a result, reduce the potential for regulatory arbitrage.[22]

II. SRO Rules and Guidance

Over time, the SROs have issued a variety of guidance and rules designed to address the risks associated with broker-dealers providing electronic access to the securities markets to other persons.[23] The Commission believes that the SRO efforts have been productive steps in the right direction. As noted above, however, the Commission preliminarily believes that a more comprehensive and effective set of rules is needed to more effectively manage the financial, regulatory, and other risks, such as legal and operational risks, associated with market access. To provide context for the Commission's proposed rulemaking, the SRO efforts to address electronic access to markets are briefly summarized below. A more detailed discussion is in the Appendix.

The NYSE and FINRA (formerly known as the National Association of Securities Dealers, Inc. ("NASD")) [24] have each issued several Information Memoranda ("IM") and Notices to Members ("NTM"), respectively, that are designed to provide guidance to their members that provide market access to customers. The guidance provided by the NYSE and the NASD is primarily advisory, as opposed to compulsory, and is similar in many respects. As discussed in more detail in the Appendix, both SROs emphasize that members are required to implement and maintain internal procedures and controls to manage the financial and regulatory risks associated with market access, and recommend certain best practices be followed.[25]

In addition, the exchanges each have adopted rules that, in general, permit non-member "sponsored participants" to obtain direct access to the exchange's trading facilities, so long as a sponsoring broker-dealer that is a member of the exchange takes responsibility for the sponsored participant's trading, and certain contractual commitments are made.[26] In addition, the Commission has just approved by delegated authority a new Nasdaq rule that requires broker-dealers offering direct market access or sponsored access to Nasdaq to establish controls regarding the associated financial and regulatory risks, and to obtain a variety of contractual commitments from sponsored access customers.[27] The key elements of that rule are described in the Appendix. The Commission preliminarily believes,

[20] *See infra* Section III.F.

[21] For example, a system-driven, pre-trade control designed to reject orders that are not reasonably related to the quoted price of the security would prevent erroneously entered orders from reaching the securities markets, which should lead to fewer broken trades and thereby enhance the integrity of trading on the securities markets.

[22] *See, e.g.,* letters to Elizabeth M. Murphy, Secretary, Commission, from Manisha Kimmel, Executive Director, Financial Information Forum, February 19, 2009 ("The [Nasdaq] proposal to establish a well-defined set of rules governing sponsored access is a positive step towards addressing consistency in sponsored access requirements."); and Ted Myerson, President, FTEN, Inc., February 19, 2009 ("[I]t is imperative that Congress and regulators, together with the private sector, work together to encourage effective real-time, pre-trade, market-wide systemic risk solutions that help prevent [sponsored access] errors from occurring in the first place.").

[23] *See, e.g.,* FINRA Rules 3010, 3012, and 3130.

[24] In 2007, the NASD and the member-related functions of New York Stock Exchange Regulation, Inc., the NYSE's regulatory subsidiary, were consolidated. As part of this regulatory consolidation, the NASD changed its name to FINRA.

[25] The Commission notes that the collective NASD and NYSE guidance now constitutes FINRA's current guidance on market access.

[26] *See, e.g.,* NYSE Rule 123B.30, NYSE Alternext Equities Rule 123B.30, NYSE Amex Rule 86, NYSE Arca Rules 7.29 and 7.30, NYSE Rule 86, CBOE Rule 6.20A, CHX Article 5, Rule 3, NSX Rule 11.9, BATS Rule 11.3(b), ISE Rule 706, NASDAQ Rule 4611(d), NASDAQ OMX BX Rule 4611(d), NASDAQ OMX PHLX Rule 1094(b)(ii).

[27] *See* Nasdaq Market Access Approval Order, *supra* note 18.

however, that a more comprehensive and effective set of rules is needed to help assure that effective risk controls on market access are established and implemented by broker-dealers whether trading occurs on Nasdaq or another exchange or ATS. Specifically, the Commission preliminarily believes significant strengthening of the requirements beyond the Nasdaq rule is warranted, in particular to assure that rules are applied on a market-wide basis to effectively prohibit "naked" access.

III. Proposed Rule 15c3–5

A. Introduction

As discussed above, SRO rules and interpretations governing market access have, over the years, sought to address the risks associated with broker-dealers providing electronic access to the securities markets. However, the Commission preliminarily believes that more comprehensive and effective standards, applied uniformly at the Commission level, are needed to appropriately manage the financial, regulatory, and other risks, such as legal and operational risks, associated with this activity. These risks—whether they involve the potential breach of a credit or capital limit, the submission of erroneous orders as a result of computer malfunction or human error, the failure to comply with SEC or exchange trading rules, the failure to detect illegal conduct, or otherwise—are present whenever a broker-dealer trades as a member of an exchange or subscriber to an ATS, whether for its own proprietary account or as agent for its customers.

The Commission, however, is particularly concerned about the quality of broker-dealer risk controls in sponsored access arrangements, where the customer order flow does not pass through the broker-dealer's systems prior to entry on an exchange or ATS. The Commission understands that, in some cases, the broker-dealer providing sponsored access may not utilize any pre-trade risk management controls (*i.e.,* "unfiltered" or "naked" access), and thus could be unaware of the trading activity occurring under its market identifier and have no mechanism to control it. The Commission also understands that some broker-dealers providing sponsored access may simply rely on assurances from their customers that appropriate risk controls are in place.

Appropriate controls to manage financial and regulatory risk for all forms of market access are essential to assure the integrity of the broker-dealer, the markets, and the financial system. The Commission preliminarily believes that risk management controls and supervisory procedures that are not applied on a pre-trade basis or that are not under the exclusive control of the broker-dealer are inadequate to effectively address the risks of market access arrangements, and pose a particularly significant vulnerability in the U.S. national market system.

Section 15(c)(3) of the Exchange Act[28] enables the Commission to adopt rules and regulations regarding the financial responsibility and related practices of broker-dealers that the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors. Pursuant to this authority, the Commission is proposing Rule 15c3–5—Risk Management Controls for Brokers or Dealers with Market Access—to reduce the risks faced by broker-dealers, as well as the markets and the financial system as a whole, as a result of various market access arrangements, by requiring effective financial and regulatory risk management controls to be implemented on a market-wide basis. These financial and regulatory risk management controls should reduce risks associated with market access and thereby enhance market integrity and investor protection in the securities markets. Proposed Rule 15c3–5 is intended to strengthen the controls with respect to market access and, because it will apply to trading on all exchanges and ATSs, reduce regulatory inconsistency and the potential for regulatory arbitrage. Finally—and importantly—because it would require direct and exclusive control by the broker or dealer of the risk management controls and supervisory procedures, and further require those controls to be implemented on a pre-trade basis, Proposed Rule 15c3–5 would have the effect of eliminating the practice of broker-dealers providing "unfiltered" or "naked" access to any exchange or ATS. As a result, the Commission preliminarily believes the proposed rule should substantially mitigate a particularly serious vulnerability of the U.S. securities markets.

B. General Description of Proposed Rule

Proposed Rule 15c3–5 would require a broker or dealer that has market access, or that provides a customer or any other person with access to an exchange or ATS through use of its MPID or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks, such as legal and operational risks, related to such market access. Specifically, the proposed rule would require that brokers or dealers with access to trading securities on an exchange or ATS, as a result of being a member or subscriber thereof, establish, document, and maintain a system of risk management controls and supervisory procedures that, among other things, are reasonably designed to (1) systematically limit the financial exposure of the broker or dealer that could arise as a result of market access, and (2) ensure compliance with all regulatory requirements that are applicable in connection with market access. The required financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous. The proposed regulatory risk management controls and supervisory procedures must also be reasonably designed to prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis, prevent the entry of orders that the broker-dealer or customer is restricted from trading, restrict market access technology and systems to authorized persons, and assure appropriate surveillance personnel receive immediate post-trade execution reports. Each such broker or dealer would be required to preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a 4(e)(7) under the Exchange Act.[29]

The financial and regulatory risk management controls and supervisory procedures required by Proposed Rule 15c3–5 must be under the direct and exclusive control of the broker or dealer with market access. In addition, a broker or dealer with market access would be required to establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures and for promptly addressing any issues. Among other things, the broker or dealer would be required to review, no less frequently than

[28] 15 U.S.C. 78o(c)(3).

[29] *See* 17 CFR 240.17a–4(e)(7). Pursuant to Rule 17a–4(e)(7), every broker or dealer subject to Rule 17a–3 is required to maintain and preserve in an easily accessible place each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the broker or dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the broker or dealer until three years after the termination of the use of the manual.

annually, the business activity of the broker or dealer in connection with market access to assure the overall effectiveness of such risk management controls and supervisory procedures and document that review. Such review would be required to be conducted in accordance with written procedures and would be required to be documented. The broker or dealer would be required to preserve a copy of such written procedures, and documentation of each such review, as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act,[30] and Rule 17a–4(b) under the Exchange Act, respectively.[31]

In addition, the Chief Executive Officer (or equivalent officer) of the broker or dealer would be required, on an annual basis, to certify that the risk management controls and supervisory procedures comply with Proposed Rule 15c3–5, and that the regular review described above has been conducted. Such certifications would be required to be preserved by the broker or dealer as part of its books and records in a manner consistent with Rule 17a–4(b) under the Exchange Act.[32]

Proposed Rule 15c3–5 is divided into the following provisions: (1) Relevant definitions, as set forth in Proposed Rule 15c3–5(a); (2) the general requirement to maintain risk management controls and supervisory procedures in connection with market access, as set forth in Proposed Rule 15c3–5(b); (3) the more specific requirements to maintain certain financial risk management controls and supervisory procedures and regulatory risk management controls and supervisory procedures, as set forth in Proposed Rule 15c3–5(c); (4) the mandate that those controls and supervisory procedures be under the direct and exclusive control of the broker-dealer with market access, as set forth in Proposed Rule 15c3–5(d); and (5) the requirement that the broker-dealer regularly review the effectiveness of the risk management controls and supervisory procedures, as set forth in Proposed Rule 15c3–5(e).

C. Definitions

For the purpose of Proposed Rule 15c3–5, there are two defined terms: "market access" and "regulatory requirements." Under Proposed Rule 15c3–5(a)(1), the term "market access" is defined as access to trading in securities on an exchange or ATS as a result of being a member or subscriber of the exchange or ATS, respectively. The proposed definition is intentionally broad, so as to include not only direct market access or sponsored access services offered to customers of broker-dealers, but also access to trading for the proprietary account of the broker-dealer and for more traditional agency activities.[33] The Commission believes any broker-dealer with such direct access to trading on an exchange or ATS should establish effective risk management controls to protect against breaches of credit or capital limits, erroneous trades, violations of SEC or exchange trading rules, and the like. These risk management controls should reduce risks associated with market access and thereby enhance market integrity and investor protection in the securities markets. While today the more significant vulnerability in broker-dealer risk controls appears to be in the area of "unfiltered" or "naked" access, the Commission believes a broker-dealer with market access should assure the same basic types of controls are in place whenever it uses its special position as a member of an exchange, or subscriber to an ATS, to access those markets. The proposed definition encompasses trading in all securities on an exchange or ATS, including equities, options, exchange-traded funds, and debt securities.

Under Proposed Rule 15c3–5(a)(2), the term "regulatory requirements" is defined as all Federal securities laws, rules and regulations, and rules of SROs, that are applicable in connection with market access. The Commission intends this definition to encompass all of a broker-dealer's regulatory requirements that arise in connection with its access 036trading on an exchange or ATS by virtue of its being a member or subscriber thereof. As discussed below in Section III.F, these regulatory requirements would include, for example, exchange trading rules relating to special order types, trading halts, odd-lot orders, SEC rules under Regulation SHO and Regulation NMS, as well as applicable margin requirements. The Commission emphasizes that the term "regulatory requirements" references existing regulatory requirements applicable to broker-dealers in connection with market access, and is not intended to substantively expand upon them.[34]

D. General Requirement To Maintain Risk Controls

As noted above, the Commission believes the financial and regulatory risk management controls described in the proposed rule should apply broadly to all forms of market access by broker-dealers that are exchange members or ATS subscribers, including sponsored access, direct market access, and more traditional agency brokerage arrangements with customers, as well as proprietary trading.[35] Accordingly, the proposed term "market access" includes all such activities, and the proposed required risk management controls and supervisory procedures set forth in Proposed Rule 15c3–5 must encompass them. In many cases, particularly with respect to proprietary trading and more traditional agency brokerage activities, the proposed rule may be substantially satisfied by existing risk management controls and supervisory procedures already implemented by broker-dealers. In other cases, particularly with respect to sponsored access arrangements, the proposed rule is designed to assure that broker-dealer controls and procedures are appropriately strengthened on a market-wide basis to meet that standard. Among other things, Proposed Rule 15c3–5 would require that certain risk management controls be applied on an automated, pre-trade basis. Therefore, Proposed Rule 15c3–5 would effectively prohibit broker-dealers from providing "unfiltered" or "naked" access to any exchange or ATS. By requiring all forms of market access by broker-dealers that are exchange members or ATS subscribers to meet standards for financial and regulatory risk management controls, Proposed Rule 15c3–5 should reduce risks and thereby enhance market integrity and investor protection.

Proposed Rule 15c3–5(b) provides that a broker or dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its MPID or otherwise, shall establish, document, and maintain a system of risk

[30] *Id.*

[31] *See* 17 CFR 240.17a–4(b). Pursuant to Rule 17a–4(b), every broker or dealer subject to Rule 17a–3 is required to preserve for a period of not less than three years, the first two years in an easily accessible place, certain records of the broker or dealer.

[32] *Id.*

[33] The Commission estimates that 1,295 brokers or dealers would have market access as defined under the proposed rule. Of these 1,295 brokers or dealers, the Commission estimates that at year-end 2008 there were 1,095 brokers-dealers that were members of an exchange. This estimate is based on broker-dealer responses to FOCUS report filings with the Commission. The Commission estimates that the remaining 200 broker-dealers were subscribers to an ATS but were not members of an exchange. This estimate is based on a sampling of subscriber information contained in Exhibit A to Form ATS–R filed with the Commission.

[34] The specific content of the "regulatory requirements" would, of course, adjust over time as laws, rules and regulations are modified.

[35] Proposed Rule 15c3–5 would not apply to non-broker-dealers, including non-broker-dealers that are subscribers of an ATS.

management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks, such as legal and operational risks, of this business activity. This provision sets forth the general requirement that any broker-dealer with access to trading on an exchange or ATS, by virtue of its special status as a member or subscriber thereof, must establish risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks, such as legal and operational risks, of this business activity. The proposed rule allows flexibility for the details of the controls and procedures to vary from broker-dealer to broker-dealer, depending on the nature of the business and customer base, so long as they are reasonably designed to achieve the goals articulated in the proposed rule. The controls and procedures would be required to be documented in writing, and the broker or dealer would be required to preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act.[36]

E. Financial Risk Management Controls and Supervisory Procedures

Under Proposed Rule 15c3–5(c), a broker-dealer's risk management controls and supervisory procedures are required to include certain elements. Proposed Rule 15c3–5(c)(1) requires that the risk management controls and supervisory procedures be reasonably designed to systematically limit the financial exposure of the broker-dealer that could arise as a result of market access. The Commission believes that, in today's fast electronic markets, effective controls against financial exposure should be required to be systematized and automated and should be required to be applied on a pre-trade basis. These pre-trade controls should protect investors by blocking orders that do not comply with such controls from being routed to a securities market. In addition, the risk management controls and supervisory procedures must be reasonably designed to limit the broker-dealer's financial exposure. As noted above, this standard allows flexibility for the details of the controls and procedures to vary from broker-dealer to broker-dealer, depending on the nature of the business and customer base, so long as they are reasonably designed to achieve the goals articulated in the proposed rule. In many cases, particularly with respect to proprietary trading and more traditional agency brokerage activities, the proposed rule may be substantially satisfied by existing financial risk management controls and supervisory procedures already implemented by broker-dealers. However, the Commission believes that the proposed rule would assure a consistent standard applies to all broker-dealers providing any type of market access and, importantly, will address the serious gap that exists with those broker-dealers that today offer "unfiltered" access.

Under Proposed Rule 15c3–5(c)(1)(i), the broker-dealer's controls and procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer, and where appropriate more finely-tuned by sector, security, or otherwise, by rejecting orders if such orders exceed the applicable credit or capital thresholds. Under this provision, a broker or dealer would be required to set appropriate credit thresholds for each customer for which it provides market access and appropriate capital thresholds for proprietary trading by the broker-dealer itself. Such controls and procedures should help ensure that market participants do not exceed their allowable credit or capital thresholds. In designing its risk management controls and supervisory procedures, the broker-dealer would be required to set an aggregate exposure threshold for each account and, where appropriate, at more granular levels such as by sector or security. The broker-dealer must establish the credit threshold for each customer. The Commission expects broker-dealers would make such determinations based on appropriate due diligence as to the customer's business, financial condition, trading patterns, and other matters, and document that decision. In addition, the Commission expects the broker-dealer would monitor on an ongoing basis whether the credit thresholds remain appropriate, and promptly make adjustments to them, and its controls and procedures, as warranted.

In addition, because the proposed controls and procedures must prevent the entry of orders that exceed the applicable credit or capital thresholds by rejecting them, the broker-dealer's controls must be applied on an automated, pre-trade basis, before orders are routed to the exchange or ATS. Furthermore, because rejection must occur if such orders would exceed the applicable credit or capital thresholds, the broker-dealer must assess compliance with the applicable threshold on the basis of exposure from orders entered on an exchange or ATS, rather than waiting for executions to make that determination. The Commission believes that, because financial exposure through rapid order entry can be incurred very quickly in today's fast electronic markets, controls should measure compliance with appropriate credit or capital thresholds on the basis of orders entered rather than executions obtained. Broker-dealers also should consider establishing "early warning" credit or capital thresholds to alert them and their customers when the firm limits are being approached, so there is an opportunity to adjust trading behavior.

Under Proposed Rule 15c3–5(c)(1)(ii), the broker-dealer's controls and procedures must be reasonably designed to prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders. Given the prevalence today of high-speed automated trading algorithms and other technology, and the fact that malfunctions periodically occur with those systems,[37] the Commission believes that broker-dealer risk management controls should be reasonably designed to detect malfunctions and prevent orders from erroneously being entered as a result, and that identifying and blocking erroneously entered orders on an order-by-order basis or over a short period of time would accomplish this. These controls also should be reasonably designed to prevent orders from being entered erroneously as a result of manual errors (*e.g.,* erroneously entering a buy order of 2,000 shares at $2.00 as a buy order of 2 shares at $2,000.00). For example, a system-driven, pre-trade control reasonably designed to reject orders that are not reasonably related to the quoted price of the security would prevent erroneously-entered orders from reaching the market. As with the risk controls and procedures applying pre-set credit or capital thresholds, the broker-dealer also would be required to monitor on a regular basis whether its systematic controls and procedures are effective in preventing the entry of erroneous orders, and promptly make adjustments to them as warranted.

The Commission emphasizes that the financial risk management controls and supervisory procedures described above

[36] *See* 17 CFR 240.17a–4(e)(7).

[37] *See, e.g.,* Google Trading Incident, *supra* note 14. *See also* SWS Trading Incident, *supra* note 15; Mizuho Trading Incident, *supra* note 16; and Rambus Trading Incident, *supra* note 17.

should not be viewed as a comprehensive list of the financial risk management controls and supervisory procedures that should be utilized by broker-dealers. Instead, the proposed rule simply is intended to set forth standards for the types of financial risk management controls and supervisory procedures that a broker-dealer with market access should implement. A broker-dealer may very well find it necessary to establish and implement financial risk management controls and supervisory procedures beyond those specifically described in the proposed rule based on its specific circumstances.

F. Regulatory Risk Management Controls and Supervisory Procedures

Under Proposed Rule 15c3–5(c)(2), a broker-dealer's risk management controls and supervisory procedures must be reasonably designed to ensure compliance with all regulatory requirements that are applicable in connection with market access. As noted above, the Commission intends these controls and procedures to encompass existing regulatory requirements applicable to broker-dealers in connection with market access, and not to substantively expand upon them.[38] As with the risk management controls and procedures for financial exposure, this provision would allow flexibility for the details of the regulatory risk management controls and procedures to vary from broker-dealer to broker-dealer, depending on the nature of the business and customer base, so long as they are reasonably designed to achieve the goals articulated in the proposed rule. In many cases, particularly with respect to proprietary trading and more traditional agency brokerage activities, the proposed rule should reinforce existing regulatory risk management controls already implemented by broker-dealers. However, the Commission believes that the proposed rule would assure a consistent standard applies to all broker-dealers providing any type of market access and, importantly, will address the serious gap that exists with those broker-dealers that today offer "unfiltered" access.

Under Proposed Rule 15c3–5(c)(2)(i), the broker-dealer's controls and procedures must be reasonably designed to prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis. Proposed Rule 15c3–5(c)(2)(ii) also would require the broker-dealer's controls and procedures to prevent the entry of orders for securities that the broker-dealer, customer, or other person, as applicable, is restricted from trading.

By requiring the regulatory risk management controls and procedures to be reasonably designed to prevent the entry of orders that fail to comply with regulatory requirements that apply on a pre-order entry basis, the proposed rule would have the effect of requiring the broker-dealer's controls be applied on an automated, pre-trade basis, before orders route to the exchange or ATS. These pre-trade, system-driven controls would therefore prevent orders from being sent to the securities markets, if such orders fail to meet certain conditions. The pre-trade controls must, for example, be reasonably designed to assure compliance with exchange trading rules relating to special order types, trading halts, odd-lot orders, SEC rules under Regulation SHO and Regulation NMS, as well as applicable margin requirements. They also must be reasonably designed to prevent the broker-dealer or customer or other person from entering orders for securities it is restricted from trading. For example, if the broker-dealer is restricted from trading options because it is not qualified to trade options, its regulatory risk management controls must automatically prevent it from entering orders in options, either for its own account or as agent for a customer. In addition, if a broker-dealer is obligated to restrict a customer from trading in a particular security, then the broker-dealer's controls must automatically prevent orders in such security from being submitted to an exchange or ATS for the account of that customer.

Under Proposed Rule 15c3–5(c)(2)(iii), the broker-dealer's controls and procedures also must be reasonably designed to restrict access to trading systems and technology that provide market access to persons and accounts pre-approved and authorized by the broker-dealer. The Commission believes that effective security procedures such as these are necessary for controlling the risks associated with market access. The Commission expects that elements of these controls and procedures would include: (1) An effective process for vetting and approving persons at the broker-dealer or customer, as applicable, who will be permitted to use the trading systems or other technology; (2) maintaining such trading systems or technology in a physically secure manner; and (3) restricting access to such trading systems or technology through effective passwords or other mechanisms that validate identity. Among other things, effective security procedures help assure that only authorized, appropriately-trained personnel have access to a broker-dealer's trading systems, thereby minimizing the risk that order entry errors or other inappropriate or malicious trading activity might occur.

Finally, Proposed Rule 15c3–5(c)(2)(iv) would require the broker-dealer's controls and procedures to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. Among other things, the Commission expects that broker-dealers would be able to identify the applicable customer associated with each such execution report. The Commission believes that immediate reports of executions would provide surveillance personnel with important information about potential regulatory violations, and better enable them to investigate, report, or halt suspicious or manipulative trading activity. In addition, these immediate execution reports should provide the broker-dealer with more definitive data regarding the financial exposure faced by it at a given point in time. This should provide a valuable supplement to the systematic pre-trade risk controls and other supervisory procedures required by the proposed rule.

G. Direct and Exclusive Broker-Dealer Control Over Financial and Regulatory Risk Management Controls and Supervisory Procedures

Proposed Rule 15c3–5(d) would require the financial and regulatory risk management controls and supervisory procedures described above to be under the direct and exclusive control of the broker-dealer that is subject to paragraph (b) of the proposed rule. This provision is designed to eliminate the practice, which the Commission understands exists today under current SRO rules, whereby the broker-dealer providing market access relies on its customer, a third party service provider, or others, to establish and maintain the applicable risk controls. The Commission believes the risks presented by market access—and in particular "naked" or "unfiltered" access—are too great to permit a broker-dealer to delegate the power to control those risks to the customer or to a third party, either of whom may be an unregulated entity. In addition, because the broker-dealer providing market access assumes the immediate financial risks of all orders, the Commission believes that such broker-dealer should have direct

[38] The specific content of the "regulatory requirements" will, of course, adjust over time as laws, rules and regulations are modified.

and exclusive control of the risk management controls and supervisory procedures even if the market access is provided to another broker-dealer.

Under the proposal, appropriate broker-dealer personnel should be able to directly monitor the operation of the financial and regulatory risk management controls in real-time.[39] Broker-dealers would have the flexibility to seek out risk management technology developed by third parties, but the Commission expects that the third parties would be independent of customers provided with market access. The broker-dealer would also be expected to perform appropriate due diligence to help assure controls are effective and otherwise consistent with the provisions of the proposed rule. The Commission understands that such technology allows the broker or dealer to exclusively manage such controls.[40] The broker-dealer also could allow a third party that is independent of customers to supplement its own monitoring of the operation of its controls. In addition, the broker-dealer could permit third parties to perform routine maintenance or implement technology upgrades on its risk management controls, so long as the broker-dealer conducts appropriate due diligence regarding any changes to such controls and their implementation. Of course, in all circumstances, the broker-dealer would remain fully responsible for the effectiveness of the risk management controls.

The Commission preliminarily believes it is important for appropriate broker-dealer personnel to have the direct and exclusive obligation to assure the effectiveness of, and the direct and exclusive ability to make appropriate adjustments to, the financial and regulatory risk management controls. This would allow the broker-dealer to more effectively make, for example, intra-day adjustments to risk management controls to appropriately manage a customer's credit limit. The Commission expects that, by requiring the financial and regulatory risk management controls and supervisory procedures be under the direct and exclusive control of the broker or dealer, any changes would be made only by appropriate broker-dealer personnel. Accordingly, the proposed rule should help assure the integrity of the controls and that the broker-dealer takes responsibility for them. Accordingly, the broker-dealer could not delegate the oversight of its controls to a third party, or allow any third party to adjust them. The broker-dealer, as the member of the exchange or subscriber of the ATS, is responsible for all trading that occurs under its MPID or other market identifier.[41] If the broker-dealer does not effectively control the risks associated with that activity, it jeopardizes not only its own financial viability, but also the stability of the markets and, potentially, the financial system. The Commission believes this responsibility is too great to allow the requisite risk management controls to be controlled by a third party, and in particular the customer which, in effect, would be policing itself. The Commission notes that this risk exists even if the third party is another broker-dealer, as the broker-dealer providing the market access is liable intra-day, at a minimum, for the financial risks incurred as a result of trading under its MPID or other identifier and, in any event, is uniquely positioned to prevent erroneous trades and comply with exchange rules and other regulatory requirements.

H. Regular Review of Risk Management Controls and Supervisory Procedures

Under Proposed Rule 15c3–5(e), a broker-dealer that is subject to paragraph (b) of the proposed rule would be required to establish, document, and maintain a system for regularly reviewing the effectiveness of its risk management controls and supervisory procedures required by paragraphs (b) and (c) of the proposed rule and for promptly addressing any issues. Among other things, the broker or dealer would be required to review, no less frequently than annually, the business activity of the broker or dealer in connection with market access to assure the overall effectiveness of such risk management controls and supervisory procedures. The broker-dealer would be required to conduct the review in accordance with written procedures and document each such review. When establishing the specifics of this regular review, the Commission expects that each broker or dealer with market access would establish written procedures that are reasonably designed to assure that the broker-dealer's controls and procedures are adjusted, as necessary, to help assure their continued effectiveness in light of any changes in the broker-dealer's business or weaknesses that have been revealed. The broker or dealer would be required to preserve a copy of such written procedures, and documentation of each such review, as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act, and Rule 17a–4(b) under the Exchange Act, respectively.

Finally, the Chief Executive Officer (or equivalent officer) of the broker or dealer would be required, on an annual basis, to certify that such risk management controls and supervisory procedures comply with Proposed Rule 15c3–5 and that the broker or dealer conducted the regular review. Such certifications would be required to be preserved by the broker or dealer as part of its books and records in a manner consistent with Rule 17a-4(b) under the Exchange Act.

Proposed Rule 15c3–5(e) is intended to assure that a broker-dealer that is subject to paragraph (b) of the proposed rule implements supervisory review mechanisms to support the effectiveness of its risk management controls and supervisory procedures on an ongoing basis. Because of the potential risks associated with market access, and the dynamic nature of both the securities markets and the businesses of individual broker-dealers, the Commission believes it is critical that broker-dealers with market access charge their most senior management with the responsibility to review and certify the efficacy of its controls and procedures at regular intervals. The Commission also believes that the requirements under Proposed Rule 15c3–5(e) should serve to bolster broker-dealer compliance programs, and promote meaningful and purposeful interaction between business and compliance personnel.

IV. Request for Comments

The Commission seeks comment on all aspects of the proposed rule. Does the proposed rule serve to appropriately and adequately mitigate the financial and regulatory risks associated with market access? If not, how should the Commission change the proposed rule to address these risks? Should the Commission address other risks in its proposed rule? Should these risks be addressed with additional specific controls in the rule text? Are there other feasible alternatives that the Commission should consider in order to achieve the goals of the proposed rule? Would the proposed rule affect trading volume? If so, what impact would the proposed rule have on trading volume? Would the proposed rule affect market quality? If so, what impact would the proposed rule have on market quality? Would the proposed rule impact trading volume or market quality differently in equities, options, fixed-income or other

[39] *See, e.g.,* NASD NTM–05–48, Members' Responsibilities When Outsourcing Activities to Third-Party Service Providers.

[40] The Commission's understanding is based on discussions with various industry participants.

[41] *See supra* note 6.

securities? Please explain response and provide any appropriate data.

Under the proposed rule, market access means access to trading in securities on an exchange or ATS as a result of being a member or subscriber of the exchange or ATS, respectively. The proposed rule would apply equally to brokers or dealers with market access, whether they are proprietary traders, conduct traditional brokerage services, or provide direct market access or sponsored access. Should the proposed rule apply to all types of market access similarly? Should market access arrangements be treated differently under the proposed rule depending on the type of market participants that are party to the arrangement?

The proposed rule would require a broker or dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its market participant identifier or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks related to market access. Generally, are there access arrangements that warrant different requirements? If so, please state which ones and why. If a broker or dealer provides another broker or dealer with market access, should such an arrangement be treated differently under the proposed rule? In this situation, should the proposed rule permit an allocation of responsibilities for implementing the appropriate financial and regulatory risk management controls between those brokers or dealers? If so, to what extent, and on what basis? Should the Commission require broker-dealers that provide other persons with sponsored access to an exchange or ATS to have separate identifiers for each such person? Are there any circumstances in which a broker-dealer ought not to be responsible for trading conducted by other persons under its MPID or otherwise? Should an ATS in its capacity as broker-dealer be required to implement appropriate risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks, such as legal and operational risks, associated with non-broker-dealer subscriber's access to its ATS?

The proposed rule encompasses trading in all securities on an exchange or ATS. Should the proposed rule apply equally to trading in all securities? For example, should the Commission consider alternatives to the proposed rule in which trading in debt securities, equities, and options are treated differently? If so, to what extent and on what basis?

Under the proposed rule, brokers or dealers would be required to implement controls that are reasonably designed to prevent the entry of orders that are not in compliance with financial controls and regulatory requirements and thereby effectively prohibit the practice of broker-dealers allowing for "unfiltered" or "naked" access to an exchange or ATS. What are the benefits and costs to the securities markets associated with "unfiltered" or "naked" access to an exchange or ATS? Specifically, what impact would effectively prohibiting "unfiltered" or "naked" access have on broker-dealers providing such access? What impact would it have on the markets? What impact would it have on customers that use such access? What percentage of volume is directed to the exchanges through "unfiltered" or "naked" access? Should the Commission consider alternatives to a prohibition on "naked" access? Would the proposed rule affect the way market participants use market access arrangements?

Are pre-trade controls the preferred method for adequately mitigating all the risks associated with market access? Should the method for managing risk be particular to the specific risk? Are there acceptable alternative modeling techniques that a broker-dealer may use to manage its financial and regulatory risks that would be functionally similar to the methods required by the rule? Please explain response and provide any appropriate data.

Would the proposed rule affect the speed or efficiency of trading? Would market participants be required to change their business models or practices in ways not contemplated by this release if the Commission were to adopt the proposed rule? Would the proposed rule potentially impact competition among, or innovation by, market participants? If so, in what way? Which market participants would be impacted? Would such changes be beneficial or detrimental? Are there other internal or external costs not identified by the Commission that could result from the proposed rule? Which market participants are the most common or active users of sponsored access, generally, and "unfiltered" access, in particular? How many small broker-dealers have or use sponsored access arrangements?

The proposed rule would require broker-dealers with market access to implement risk management controls and supervisory procedures that prevent the entry of orders that, among other things, exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer, exceed appropriate price or size parameters on an order-by-order basis or over a short period of time, are indicative of duplicative orders, are not in compliance with a regulatory requirement that must be satisfied on a pre-order entry basis, or that is for a security that a broker or dealer, customer, or other person is restricted from trading. Should the Commission include additional financial and regulatory risk management controls in the proposed rule? If so, what additional financial and regulatory risk management controls should be included? Would the additional standards apply to all brokers or dealers, or to a subset? Conversely, if there are too many financial and regulatory standards, which ones are unnecessary? Would these standards be unnecessary for all parties, or should they still apply in certain specific cases? Should the Commission specify more precise details regarding the financial and regulatory risk management controls? Should the proposed rule specify financial and regulatory risk management controls that would apply after an order has been entered on exchange or ATS?

The proposed rule would require broker-dealers to establish an appropriate credit threshold for each customer. The Commission expects that broker-dealers would establish such threshold based on appropriate due diligence as to the customer's business, financial condition, trading patterns, and other matters, and document that decision. Should the criteria for determining the appropriate threshold be explicitly listed in the proposed rule? Are there specific factors broker-dealers should consider in conducting due diligence? Should the proposed rule require broker-dealers to establish "early warning" credit or capital thresholds to alert them and their customers when the firm limits are being approached, so there is an opportunity to adjust trading behavior? Should the proposed rule require a broker-dealer to establish an aggregate credit threshold for all of its customers?

Should the Commission provide additional guidance on the short period of time in the prevention of entering erroneous orders requirement? Is there a common understanding among market participants regarding the timeframe used to prevent the entry of erroneous orders?

The proposed rule would require broker-dealers with market access to

implement risk management controls and supervisory procedures that are reasonably designed to restrict access to trading systems and technology that provide market access to permit access only to persons and accounts pre-approved and authorized by the broker-dealer. Could the goal of this provision, the preservation of system and market integrity, be achieved in another way? If so, how?

The proposed rule would require broker-dealers with market access to implement risk management controls and supervisory procedures that are reasonably designed to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. Should the Commission expand on or clarify the requirement that risk management controls and supervisory procedures be reasonably designed to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access? Is there a common understanding among market participants as to what constitutes immediate post-trade execution reports?

The Commission seeks comment on whether broker-dealers could effectively comply with the proposed rule—in particular, the requirement that the financial and regulatory risk management controls and supervisory procedures be under the direct and exclusive control of the broker-dealer with market access—by using risk management technology developed by third parties. Are there any circumstances where a broker or dealer would not be able to comply with the proposed rule using risk management technology developed by third parties? Are there additional considerations that the Commission should evaluate if a broker-dealer outsources the development of its risk management system and supervisory procedures?

The proposed rule would require the broker-dealer to periodically review its risk management controls and supervisory procedures. Among other things, the broker-dealer would be required to review in accordance with written procedures, and document that review, no less frequently than annually, its business activity in connection with market access to assure the overall effectiveness of such risk management controls and supervisory procedures. Should this review be conducted more or less frequently? In addition, the Chief Executive Officer (or equivalent officer) of the broker-dealer would be required, on an annual basis, to certify that such risk management controls and supervisory procedures comply with paragraphs (b) and (c) and that the regular review was conducted. Should the certification be conducted more or less frequently? The proposed rule would require a broker or dealer to preserve a copy of its supervisory procedures, a written description of its risk management controls, and written supervisory procedures for its regular review as part of its books and records in a manner consistent with Rule 17a–4(e)(7). Is this proposed record retention requirement clear? The proposed rule would require documentation of each regular review and Chief Executive Officer certifications be preserved by the broker or dealer as part of its books and records in a manner consistent with Rule 17a–4(b). Is this proposed record retention requirement clear?

The Commission strongly encourages commenters to respond within the designated comment period. It intends to act quickly in reviewing the comments and assessing further action.

V. Paperwork Reduction Act

Certain provisions of Proposed Rule 15c3–5 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[42] In accordance with 44 U.S.C. 3507 and 5 CFR 1320.11, the Commission has submitted the provisions to the Office of Management and Budget ("OMB") for review. The title for the proposed new collection of information requirement is "Rule 15c3–5, Market Access." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

A. Summary of Collection of Information

Proposed Rule 15c3–5 would require a broker or dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its MPID or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures to assist it in managing the financial, regulatory, and other risks, such as legal and operational risks, of this business activity. The system of risk management controls and supervisory procedures, among other things, shall be reasonably designed to (1) systematically limit the financial exposure of the broker or dealer that could arise as a result of market access, and (2) ensure compliance with all regulatory requirements that are applicable in connection with market access. The financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous. As a practical matter, the proposed rule would require a respondent to set appropriate credit thresholds for each customer for which it provides market access and appropriate capital thresholds for proprietary trading by the broker-dealer itself. The regulatory risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that do not comply with regulatory requirements that must be satisfied on a pre-order entry basis, prevent the entry of orders that the broker-dealer or customer is restricted from trading, restrict market access technology and systems to authorized persons, and assure appropriate surveillance personnel receive immediate post-trade execution reports. Each such broker or dealer would be required to preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act.[43]

In addition, the proposed rule would require a broker or dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its MPID or otherwise, to establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures required under the proposed rule and for promptly addressing any issues. Among other things, the broker or dealer would be required to review, no less frequently than annually, the business activity of the broker or dealer in connection with market access to assure the overall effectiveness of such risk management controls and supervisory procedures and document that review. Such review would be required to be conducted in accordance with written procedures and would be required to be documented. The broker or dealer would be required to preserve a copy of such written procedures, and documentation of each such review, as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act,[44] and Rule 17a–4(b) under the Exchange Act, respectively.[45]

In addition, the Chief Executive Officer (or equivalent officer) of the

[42] 44 U.S.C. 3501 *et seq.*

[43] *See supra* note 29.

[44] *Id.*

[45] *See supra* note 31.

broker or dealer, on an annual basis, would be required to certify that such risk management controls and supervisory procedures comply with the proposed rule, that the broker or dealer conducted such review, and such certifications shall be preserved by the broker or dealer as part of its books and records in a manner consistent with Rule 17a–4(b) under the Exchange Act.[46]

B. Proposed Use of Information

The proposed requirement that a broker or dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its MPID or otherwise, establish, document, and maintain a system of risk management controls and supervisory procedures that, among other things, shall be reasonably designed to (1) systematically limit the financial exposure of the broker or dealer that could arise as a result of market access, and (2) ensure compliance with all regulatory requirements that are applicable in connection with market access, would serve to ensure that such brokers or dealers have sufficiently effective controls and procedures in place to appropriately manage the risks associated with market access. The proposed requirement to preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act would help assure that appropriate written records were made, and would be used by the Commission staff and SRO staff during an examination of the broker or dealer for compliance with the proposed rule.

The proposed requirement to maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures required under the proposed rule would serve to ensure that the risk management controls and supervisory procedures remain effective. A broker-dealer would use these risk management controls and supervisory procedures to fulfill its obligations under the proposed rule, as well as to evaluate and ensure its financial integrity more generally. The Commission and SROs would use this information in their exams of the broker or dealer, as well as for regulatory purposes. The proposed requirement that a broker or dealer preserve a copy of written procedures, and documentation of each such regular review, as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act, and Rule 17a–4(b) under the Exchange Act, respectively, would help assure that the regular review was in fact completed, and would be used by the Commission staff and SRO staff during an examination of the broker or dealer for compliance with the proposed rule. The proposed requirement that the Chief Executive Officer (or equivalent officer) of the broker or dealer, on an annual basis, certify that such risk management controls and supervisory procedures comply with proposed Rule 15c3–5, that the annual review was conducted, and that such certifications be preserved by the broker or dealer as part of its books and records in a manner consistent with Rule 17a–4(b) under the Exchange Act would help ensure that senior management review the efficacy of its controls and procedures at regular intervals and that such review is documented. This certification would be used internally by the broker or dealer as evidence that it complied with the proposed rule and possibly for internal compliance audit purposes. The certification also would be used by Commission staff and SRO staff during an examination of the broker or dealer for compliance with the proposed rule or more generally with regard to evaluation of a broker or dealer's risk management control procedures and controls.

The proposed rule would require a broker or dealer with market access to assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access. The broker or dealer would use these post-trade execution reports in reviewing for potential regulatory violations. In addition, these reports would better enable the broker or dealer to investigate, report, or halt suspicious or manipulative trading activity. In addition, the Commission and SROs may review these reports when examining the broker or dealer.

C. Respondents

The proposed "collection of information" contained in Proposed Rule 15c3–5 would apply to approximately 1,295 brokers and dealers that have market access or provide a customer or any other person with market access. Of these 1,295 brokers and dealers, the Commission estimates that there are 1,095 brokers or dealers that are members of an exchange. This estimate is based on broker-dealer responses to FOCUS report filings with the Commission. The Commission estimates that the remaining 200 broker-dealers are subscribers to ATSs but are not exchange members. This estimate is based on a sampling of subscriber information contained in Exhibit A to Form ATS–R filed with the Commission. The Commission requests comment on the accuracy of these estimated figures.

D. Total Initial and Annual Reporting and Recordkeeping Burdens

As discussed above, brokers and dealers are currently subject to a variety of SRO guidance and rules related to market access. Currently, most brokers or dealers, when accessing an exchange or ATS in the ordinary course of their business, already have risk management controls and supervisory procedures in place, although these controls and procedures will differ based on each broker or dealer's unique business model.[47] For the purposes of the PRA, the Commission must consider the burden on respondents to bring their risk management controls and supervisory procedures into compliance with the proposed rule. The Commission notes that among brokers or dealers with market access, there is currently no uniform standard for risk management controls and supervisory procedures. The extent to which a respondent would be burdened by the proposed collection of information under the proposed rule would depend significantly on the financial and regulatory risk management controls that already exist in the respondent's system as well as the respondent's business model. In many cases, particularly with respect to proprietary trading, more traditional agency brokerage activities, and direct market access, the proposed rule may be substantially satisfied by a respondent's pre-existing financial and regulatory risk management controls and current supervisory procedures. These brokers or dealers likely would only require limited updates to their systems to meet the requisite risk management controls specified in the proposed rule.

The Commission believes that the majority of respondents has order management systems with pre-trade financial and regulatory controls, although the use and range of those controls may vary among firms. As noted above, certain pre-trade controls, such as pre-set trading limits or filters to prevent erroneous trades may already be in place within a respondent's risk management system. Similarly, the extent to which receipt of immediate post-trade execution reports creates a burden on respondents would depend on whether a respondent already

[46] *Id.*

[47] *See supra* note 23.

receives such reports on an immediate, post-trade basis or on an end-of-day basis. For broker-dealers that rely largely on "unfiltered" or "naked" access, the proposed rule could require the development or significant upgrade of a new risk management system, which would be a significantly larger burden on a potential respondent. Therefore, the burden imposed by the proposed rule would differ vastly depending on a broker-dealer's current risk management system and business model.

Proposed Rule 15c3–5 would also require a respondent to update its review and compliance procedures to comply with the proposed rule's requirement to regularly review its risk management controls and supervisory procedures, including a certification annually by the Chief Executive Officer (or equivalent officer). The Commission notes that a respondent should currently have written compliance procedures reasonably designed to review its business activity.[48] Proposed Rule 15c3–5 would initially require a respondent to update its written compliance procedures to document the method in which the respondent plans to comply with the proposed rule.

1. Technology Development and Maintenance

The Commission estimates that the initial burden for a potential respondent to comply with the proposed requirement to establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures, on average, would be 150 hours if performed in-house,[49] or approximately $35,000 if outsourced.[50] This figure is based on the estimated number of hours for initial internal development and implementation by a respondent to program its system to add the controls needed to comply with the requirements of the proposed rule, expand system capacity, if necessary, and establish the ability to receive immediate post-trade execution reports. Based on discussion with various industry participants, the Commission expects that brokers or dealers with market access currently have the means to receive post-trade executions reports, at a minimum, on an end-of-day basis.

If the broker-dealer decides to forego internal technology development and instead opts to purchase technology from a third-party technology provider or service bureau, the technology costs would also depend on the risk management controls that are already in place, as well as the business model of the broker or dealer. Based on discussions with various industry participants, the Commission understands that technology for risk management controls is generally purchased on a monthly basis. Based on discussions with various industry participants, the Commission's staff estimates that the cost to purchase technology from a third-party technology provider or service bureau would be approximately $3,000 per month for a single connection to a trading venue, plus an additional $1,000 per month for each additional connection to that exchange. For a conservative estimate of the annual outsourcing cost, the Commission notes that for two connections to each of two different trading venues, the annual cost would be $96,000.[51] The potential range of costs would vary considerably, depending upon the business model of the broker-dealer.

On an ongoing basis, a respondent would have to maintain its risk management system by monitoring its effectiveness and updating its systems to address any issues detected. In addition, a respondent would be required to preserve a copy of its written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act. The Commission estimates that the ongoing annualized burden for a potential respondent to maintain its risk management system would be approximately 115 burden hours if performed in-house,[52] or approximately $26,800 if outsourced.[53] The Commission believes the ongoing burden of complying with the proposed rule's collection of information would include, among other things, updating systems to address any issues detected, updating risk management controls to reflect any change in its business model, and documenting and preserving its written description of its risk management controls.

For hardware and software expenses, the Commission estimates that the average initial cost would be approximately $16,000 per broker-dealer,[54] while the average ongoing cost would be approximately $20,500 per broker-dealer.[55]

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[48] *Id.*

[49] This estimate is based on discussions with various industry participants. Specifically, the modification and upgrading of hardware and software for a pre-existing risk control management system, with few substantial changes required, would take approximately two weeks, while the development of a risk control management system from scratch would take approximately three months.

Based on discussions with industry participants, the Commission estimates that a dedicated team of 1.5 people would be required for the system development. The team may include one or more programmer analysts, senior programmers, or senior systems analysts. Each team member would work approximately 20 days per month, or 8 hours × 20 days = 160 hours per month. Therefore, the total number of hours per month for one system development team would be 240 hours.

A two-week project to modify and upgrade a pre-existing risk control management system would require 240 hours/month × 0.5 months = 120 hours, while a three-month project to develop a risk control management system from scratch would require 240 hours/month × 3 months = 720 hours. Based on discussions with industry participants, the Commission estimates that 95% of all respondents would require modifications and upgrades only, and 5% would require development of a system from scratch. Therefore, the total average number of burden hours for an initial internal development project would be approximately (0.95 × 120 hours) + (0.05 × 720 hours) = 150 hours.

[50] *See infra* note 61.

[51] 12 months × $4,000 (estimated monthly cost for two connections to a trading venue) × 2 trading venues = $96,000. This estimate is based on discussions with various industry participants. For purposes of this estimate, "connection" is defined as up to 1000 messages per second inbound, regardless of the connection's actual capacity.

For the conservative estimate above, the Commission chose two connections to a trading venue, the number required to accommodate 1,500 to 2,000 messages per second. The estimated number of messages per second is based on discussions with various industry participants.

[52] Based on discussions with industry participants, the Commission estimates that a dedicated team of 1.5 people would be used for the ongoing maintenance of all technology systems. The team may include one or more programmer analysts, senior programmers, or senior systems analysts. In-house system staff size varies depending on, among other things, the business model of the broker or dealer. Each staff member would work 160 hours per month, or 12 months × 160 hours = 1,920 hours per year. A team of 1.5 people therefore would work 1,920 hours × 1.5 people = 2,880 hours per year. Based on discussions with industry participants, the Commission estimates that 4% of the team's total work time would be used for ongoing risk management maintenance. Accordingly, the total number of burden hours for this task, per year, is 0.04 × 2,880 hours = 115.2 hours.

[53] *See infra* note 62.

[54] Industry sources estimate that to build a risk control management system from scratch, hardware would cost $44,500 and software would cost $58,000, while to upgrade a pre-existing risk control management system, hardware would cost $5,000 and software would cost $6,517. Based on discussions with industry participants, the Commission estimates that 95% of all respondents would require modifications and upgrades only, and 5% would require development of a system from scratch. Therefore, the total average hardware and software cost for an initial internal development project would be approximately (0.95 × $11,517) + (0.05 × $102,500) = $16,066, or $16,000.

[55] Industry sources estimate that for ongoing maintenance, hardware would cost $8,900 on average and software would cost $11,600 on average. The total average hardware and software cost for ongoing maintenance would be $8,900 + $11,600 = $20,500.

2. Legal and Compliance

The Commission provides a separate set of estimates for legal and compliance obligations. The Commission preliminarily believes that the majority of broker-dealers should already have compliance policies and supervisory procedures in place.[56] Accordingly, the Commission believes that the initial burden to comply with the proposed compliance requirements should not be substantial. Based on discussions with various industry participants and the Commission's prior experience with broker-dealers, the Commission estimates that the initial legal and compliance burden on average for a potential respondent to comply with the proposed requirement to establish, document, and maintain compliance policies and supervisory procedures would be approximately 35 hours. Specifically, the setting of credit and capital thresholds for each customer would require approximately 10 hours,[57] and the modification or establishment of applicable compliance policies and procedures would require approximately 25 hours,[58] which includes establishing written procedures for reviewing the overall effectiveness of the risk management controls and supervisory procedures.

On an ongoing basis, a respondent would have to maintain and review its risk management controls and supervisory procedures to assure their effectiveness as well as to address any deficiencies found. The broker or dealer would have to review, no less frequently than annually, its business activity in connection with market access to assure the overall effectiveness of the risk management controls and supervisory procedures and would be required to make changes to address any problems or deficiencies found through this review. Such review would be required to be conducted in accordance with written procedures and would be required to be documented. The broker or dealer would be required to preserve a copy of such written procedures, and documentation of each such review, as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act, and Rule 17a–4(b) under the Exchange Act, respectively. On an annual basis, the Chief Executive Officer (or equivalent officer) of the broker or dealer would be required to certify that such risk management controls and supervisory procedures comply with the proposed rule, that the broker or dealer conducted such review, and that such certifications are preserved by the broker or dealer as part of its books and records in a manner consistent with Rule 17a–4(b) under the Exchange Act. The ongoing burden of complying with the proposed rule's collection of information would include documentation for compliance with its risk management controls and supervisory procedures, modification to procedures to address any deficiencies in such controls or procedures, and the required preservation of such records.

Based on discussions with industry participants and the Commission's prior experience with broker-dealers, the Commission estimates that a broker-dealer's implementation of an annual review, modification of its risk management controls and supervisory procedures to address any deficiencies, and preservation of such records would require 45 hours per year. Specifically, compliance attorneys who review, document, and update written compliance policies and procedures would require an estimated 20 hours per year; a compliance manager who reviews, documents, and updates written compliance policies and procedures is expected to require 20 hours per year; and the Chief Executive Officer, who certifies the policies and procedures, is expected to require another 5 hours per year.

Based on discussions with industry participants and the Commission's prior experience with broker-dealers, the Commission believes that the ongoing legal and compliance obligations under the proposed rule would be handled internally because compliance with these obligations is consistent with the type of work that a broker-dealer typically handles internally. The Commission does not believe that a broker-dealer would have any recurring external costs associated with legal and compliance obligations.

3. Total Burden

Under the proposed rule, the total initial burden for all respondents would be approximately 239,575 hours ([150 hours (for technology) + 35 hours (for legal and compliance)] × 1,295 brokers and dealers = 239,575 hours) and the total ongoing annual burden would be approximately 207,200 hours ([115 hours (for technology) + 45 hours (for legal and compliance)] × 1,295 brokers and dealers = 207,200 hours). For hardware and software expenses, the total initial cost for all respondents would be $20,720,000 ($16,000 per broker-dealer × 1,295 brokers and dealers = $20,720,000) and the total ongoing cost for all respondents would be $26,547,500 ($20,500 per broker-dealer × 1,295 brokers and dealers = $26,547,500). The estimates of the initial and annual burdens are based on discussions with potential respondents.

The Commission seeks comment on the reporting and recordkeeping collection of information burdens associated with the proposed rule. In particular:

1. How many broker-dealers would incur collection of information burdens if the proposed rule were adopted by the Commission?

2. What are the burdens, both initial and annual, that a broker-dealer would incur for programming, expanding systems capacity, establishing compliance programs, and maintaining post-trade reporting if the Commission were to adopt the proposed rule? Would there be additional burdens associated with the collection of information under this proposed rule?

3. How much work would it take for brokers or dealers with existing risk management control systems and supervisory procedures to comply with the proposed rule? Would brokers or dealers generally perform the work internally or outsource the work? What would be the hardware and software costs for brokers or dealers that complete the work internally? What about those that outsource the work?

E. General Information About Collection of Information

The collection of information would be mandatory. The collection of information would not be required to be made public but would not be confidential.

F. Request for Comment

Pursuant to 44 U.S.C. 3505(c)(2)(B), the Commission solicits comment to:

1. Evaluate whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

[56] *See supra* note 23.

[57] The Commission estimates that one compliance attorney and one compliance manager would each require 5 hours, for a total initial burden of 10 hours.

[58] The Commission estimates that one compliance attorney and one compliance manager would each require 10 hours, and one Chief Executive Officer would require 5 hours, for a total initial burden of 25 hours.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, DC 20503; and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090 with reference to File No. S7–03–10. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The Commission has submitted the proposed collection of information to OMB for approval. Requests for the materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–03–10, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213.

VI. Consideration of Costs and Benefits

The Commission is sensitive to the costs and benefits of the proposed rule and requests comment on the costs and benefits of the proposed Rule 15c3–5 discussed above. The Commission encourages commenters to identify, discuss, analyze, and supply relevant data regarding any such costs or benefits.

A. Benefits

Proposed Rule 15c3–5 should benefit investors, brokers-dealers, their counterparties, and the national market system as a whole by reducing the risks faced by broker-dealers and other market participants as a result of various market access arrangements by requiring financial and regulatory risk management controls to be implemented on a uniform, market-wide basis. The proposed financial and regulatory risk management controls should reduce risks to broker-dealers and markets, as well as systemic risk associated with market access and enhance market integrity and investor protection in the securities markets by effectively prohibiting the practice of "unfiltered" or "naked" access to an exchange or ATS. The proposed rule would establish a uniform standard for a broker or dealer with market access with respect to risk management controls and procedures which should reduce the potential for regulatory arbitrage and lead to consistent interpretation and enforcement of applicable regulatory requirements across markets.

One of the benefits of the proposed rule should be the reduction of systemic risk associated with market access through the elimination of "unfiltered" or "naked" access. As discussed above, due in large part to technological advancements, the U.S. markets have experienced a rise in the use and reliance of "sponsored access" arrangements where customers place orders that are routed to markets with little or no substantive intermediation by a broker or dealer. The risk of unmonitored trading is heightened with the increased prominence of high-speed, high-volume, automated algorithmic trading, where orders can be routed for execution in milliseconds. If a broker-dealer does not implement strong systematic controls, the broker or dealer may be unaware of customer trading activity that is occurring under its MPID or otherwise. In the "unfiltered" or "naked" access context, as well as with all market access generally, the Commission is concerned that order entry errors could suddenly and significantly make a broker or dealer and other market participants financially vulnerable within mere minutes or seconds. Real examples of such potential catastrophic events have already occurred. For instance, as discussed earlier, on September 30, 2008, trading in Google became extremely volatile toward the end of the day trading, dropping 93% in value at one point, due to an influx of erroneous orders onto an exchange from a single market participant which resulted in the cancellation of numerous trades.[59]

Without systematic risk protection, erroneous trades, whether resulting from manual errors or a faulty automated, high-speed algorithm, could potentially expose a broker or dealer to enormous financial burdens and disrupt the markets. Because the impact of such errors may be most profound in the "unfiltered" access context, but are not unique to it, it is clearly in a broker or dealer's financial interest, and the interest of the U.S. markets as whole, to be shielded from such a scenario regardless of the form of market access. The mitigation of significant systemic risks should help ensure the integrity of the U.S. markets and provide the investing public with greater confidence that intentional, bona fide transactions are being executed across the national market system. Proposed Rule 15c3–5 should promote confidence as well as participation in the market by enhancing the fair and efficient operation of the U.S. securities markets.

The national market system is currently exposed to risk that can result from unmonitored order flow, as a recent report has estimated that "naked" access accounts for 38 percent of the daily volume for equities traded in the U.S. markets.[60] The Commission is aware that a certain segment of the broker-dealer community has declined to incorporate "naked" access arrangements into their business models because of the inherent risks of the practice. In the absence of a Commission rule that would prohibit such market access, these brokers or dealers could be compelled by competitive and economic pressures to offer "naked" access to their customers and thereby significantly increase a systemic vulnerability of the national market system.

Finally, the Commission believes that in many cases broker or dealers whose business activities include proprietary trading, traditional agency brokerage activities, and direct market access, would find that their current risk management controls and supervisory procedures may substantially satisfy the requirements of the proposed rule, and require minimal material modifications. Such broker or dealers would experience the market-wide benefits of the proposal with limited additional costs related to their own compliance.

The Commission seeks comment on the anticipated benefits of the proposed rule, including the following: Would the proposed rule provide market benefits that the Commission has not discussed? Would the proposed rule help level the playing field for broker-dealer competition? Would the proposed rule serve to reduce systemic risks to the US markets? Would the proposed rule serve to promote trading volumes? Would the proposed rule enhance market integrity, promote investor protection, and protect the public interest?

B. Costs

1. Technology Development and Maintenance

Broker-dealers with market access may comply with the proposed rule in several ways. Specifically, a broker-dealer may choose to internally develop risk management controls from scratch, or upgrade its existing systems; each of

[59] *See* Google Trading Incident, *supra* note 14. *See also* SWS Trading Incident, *supra* note 15; Mizuho Trading Incident, *supra* note 16; and Rambus Trading Incident, *supra* note 17.

[60] *See supra* note 10.

these approaches has potential costs that are divided into initial costs and annual ongoing costs. Alternatively, a broker-dealer may choose to purchase a risk management solution from an outside vendor. As stated above, it is likely many broker-dealers with market access would be able to substantially satisfy the proposed rule with their current risk management controls and supervisory procedures, requiring few material changes. However, for others, the costs of upgrading and introducing the required systems would vary considerably based on their current controls and procedures, as well as their particular business models. For instance, the needs of a broker-dealer would vary based on its current systems and controls in place, the comprehensiveness of its controls and procedures, the sophistication of its client base, the types of trading strategies that it utilizes, the number of trading venues it connects to, the number of connections that it has to each trading market, and the volume and speed of its trading activity.

Commission staff's discussions with industry participants found that broker-dealers who must develop or substantially upgrade existing systems could face several months of work requiring considerable time and effort. For example, the Commission conservatively estimates that developing a system from scratch could take approximately three months, while upgrading a pre-existing risk control management system could take approximately two weeks. Overall, Commission staff estimates that the initial cost for an internal development team to develop or substantially upgrade an existing risk control system would be $51,000 per broker-dealer,[61] or $66.0 million for 1,295 broker-dealers. The Commission further estimates that the total annual ongoing cost to maintain an in-house risk control management system is $47,300 per broker-dealer, or $61.3 million for 1,295 broker-dealers.[62]

We note that the potential range of costs would vary considerably, depending upon the needs of the broker-dealer. For example, if 65 broker-dealers—*i.e.,* 5% of the 1,295 broker-dealers affected under the rule—were to build risk control management systems from scratch, the total initial technology cost would be approximately $17.6 million. A team of 1.5 people, working full-time for 3 months, would work an estimated total of 720 burden hours on the project. The resulting personnel cost to build such a risk control management system would be approximately $167,904 per broker-dealer, or $10,913,760 for 65 broker-dealers. The hardware and software cost to build a risk control management system from scratch would be $102,500 per broker-dealer, or $6,662,500 for 65 broker-dealers. The combined personnel, hardware, and software cost would be $17.6 million.

By contrast, if the remaining 1,230 broker-dealers were to upgrade and modify their pre-existing risk control management systems, the total initial technology cost for those 1,230 broker-dealers would be approximately $48.6 million. A team of 1.5 people, working full-time for 2 weeks, would work an estimated total of 120 burden hours on the project. The resulting staff cost to upgrade and modify a pre-existing risk control management system would be approximately $27,984 per broker-dealer, or $34.4 million for 1,230 broker-dealers. The hardware and software cost to upgrade and modify a risk control management system would be $11,517 per broker-dealer, or $14.2 million for 1,230 broker-dealers. The combined personnel, hardware, and software cost would be $48.6 million. The Commission welcomes comments on these estimates.

Rather than developing or upgrading systems, broker-dealers may choose to purchase a risk management solution from a third-party vendor. Potential costs of contracting with such a vendor were obtained from industry participants. Here again, the potential range of costs would vary considerably, depending upon the needs of the broker-dealer. For instance, the needs of a broker-dealer would vary based on its current systems and controls in place, the comprehensiveness of its controls and procedures, the sophistication of its client base, the types of trading strategies that it utilizes, the number of trading venues it connects to, the number of connections that it has to each trading market, and the volume and speed of its trading activity. As discussed previously, a broker-dealer is estimated to pay as much as approximately $4,000 per month per trading venue for a startup contract depending on its particular needs. The Commission conservatively estimates $8,000 per month (*i.e.,* connection to two trading venues), or $96,000 annually, for a startup contract.[63] For instance, the Commission estimates that if 65 broker-dealers choose to purchase systems from a third-party vendor as an alternative to building a risk control management system from scratch,[64] the cost to the industry for initial startup

[61] *See supra* note 49. The Commission estimates that the average initial cost of $51,000 per broker-dealer consists of $35,000 for technology personnel and $16,000 for hardware and software. As stated in the PRA section, industry sources estimate that the average system development team consists of one or more programmer analysts, senior programmers, and senior systems analysts. The Commission estimates that the programmer analyst would work 40% of the total hours required for initial development, or 150 hours × 0.40 = 60 hours; the senior programmer would work 20% of the total hours, or 150 hours × 0.20 = 30 hours; and the senior systems analyst would work 40% of the total hours, or 150 hours × 0.40 = 60 hours. The total initial development cost for staff is estimated to be 60 hours × $193 (hourly wage for a programmer analyst) + 30 hours × $292 (hourly wage for a senior programmer) + 60 hours × $244 (hourly wage for a senior systems analyst) = $34,980, or $35,000.

The $193, $292, and $244 per hour estimates for a programmer analyst, senior programmer, and senior systems analyst, respectively is from SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

The Commission estimates that the average initial hardware and software cost is $16,000 per broker-dealer. Industry sources estimate that to build a risk control management system from scratch, hardware would cost $44,500 and software would cost $58,000, while to upgrade a pre-existing risk control management system, hardware would cost $5,000 and software would cost $6,517. Based on discussions with industry participants, the Commission estimates that 95% of all respondents would require modifications and upgrades only, and 5% would require development of a system from scratch. Therefore, the total average hardware and software cost for an initial internal development project would be approximately (0.95 × $11,517) + (0.05 × $102,500) = $16,066, or $16,000.

[62] *See supra* note 52. The Commission estimates that the average annual ongoing cost of $47,300 per broker-dealer consists of $26,800 for technology personnel and $20,500 for hardware and software. The Commission estimates that the programmer analyst would work 40% of the total hours required for ongoing maintenance, or 115 hours × 0.40 = 46 hours; the senior programmer would work 20% of the total hours, or 115 hours × 0.20 = 23 hours; and the senior systems analyst would work 40% of the total hours, or 115 hours × 0.40 = 46 hours. The total ongoing maintenance cost for staff is estimated to be 46 hours × $193 (hourly wage for a programmer analyst) + 23 hours × $292 (hourly wage for a senior programmer) + 46 hours × $244 (hourly wage for a senior systems analyst) = $26,818, or $26,800.

The $193, $292, and $244 per hour estimates for a programmer analyst, senior programmer, and senior systems analyst, respectively is from SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

The Commission estimates that the average annual ongoing hardware and software cost is $20,500 per broker-dealer. Industry sources estimate that for ongoing maintenance, hardware would cost $8,900 on average and software would cost $11,600 on average. The total average hardware and software cost for ongoing maintenance would be $8,900 + $11,600 = $20,500.

[63] *See supra* Section V.D.1.

[64] As stated previously, the Commission estimates that 5% of all broker-dealers will require development of a system from scratch. *See supra* note 49. The Commission believes that a total of 65 broker-dealers is a reasonable estimate here.

contracts could be approximately $6,240,000.[65] The Commission preliminarily believes that the annual ongoing cost would be significantly less than the initial startup cost; however, to be conservative, we estimate that the annual ongoing cost for 65 broker-dealers would be the same as the startup estimate of $6,240,000 per year. The Commission welcomes comments on the reasonableness of these estimates.

2. Legal and Compliance

Like today, a broker or dealer would be obligated to comply with all applicable regulatory requirements such as exchange trading rules relating to special order types, trading halts, odd-lot orders, SEC rules under Regulation SHO and Regulation NMS, and applicable margin requirements. Accordingly, the Commission believes that the overall cost increase associated with developing and maintaining compliance policies and procedures is not expected to be significant because the proposed rule may be substantially satisfied by existing risk management controls and supervisory procedures already implemented by brokers-dealer that conduct proprietary trading, traditional brokerage activities, direct market access, and sponsored access. Therefore, many of the financial and regulatory risk management controls specified in the proposed rule—such as prevention of trading restricted products, or setting of trade limits—should already be in place and should not require significant additional expenditure of resources.

The Commission estimates that the initial cost for a broker or dealer to comply with the proposed requirement to establish, document, and maintain compliance policies and supervisory procedures would be approximately $28,200 per broker-dealer, or $36.5 million for 1,295 broker-dealers. Specifically, the costs for setting credit and capital thresholds would be approximately $2,640;[66] and the modification or establishment of applicable compliance policies and procedures would be approximately $25,555 per broker-dealer.[67]

The Commission further estimates that the costs of the annual review, modification of applicable compliance policies and supervisory procedures, and preservation of such records would be approximately $30,800 per broker-dealer, or $39.9 million for 1,295 broker-dealers. Specifically, compliance attorneys who review, document, and update written compliance policies and procedures would cost an estimated $5,400 per year;[68] a compliance manager who reviews, documents, and updates written compliance policies and procedures is expected to cost $5,160;[69] and the Chief Executive Officer, who certifies the policies and procedures, would cost $20,275.[70]

The Commission believes that the ongoing legal and compliance obligations under the proposed rule would be handled internally because compliance with these obligations is consistent with the type of work that a broker-dealer typically handles internally. The Commission does not believe that a broker-dealer would likely have any recurring external costs associated with legal and compliance obligations.

3. Total Cost

The Commission believes that this proposed rule would have its greatest impact on broker-dealers that provide "naked" access, and that the majority of broker-dealers with market access are likely to be able to substantially satisfy the requirements of the proposed rule change with much of their current existing risk management controls and supervisory procedures. However, for broker-dealers that would need to develop or substantially upgrade their systems the cost would vary considerably.

We note that the potential range of costs would vary considerably, depending upon the needs of the broker-dealer and its current risk management controls and supervisory procedures. For example, the Commission estimates that if 65 broker-dealers build risk management systems from scratch and modify their compliance procedures accordingly, the total initial cost could be approximately as much as $19.4 million. The cost to build the risk control management systems would be $17.6 million for 65 broker-dealers,[71] while the cost to initially develop or modify compliance procedures for the same would be approximately $28,200 per broker-dealer,[72] or $1,833,000 for 65 broker-dealers. The total initial cost to build systems from scratch is thus estimated to be approximately $19.4 million.

By contrast, the Commission estimates that if the remaining 1,230 broker-dealers would upgrade their pre-existing risk control management systems and modify their compliance procedures accordingly, the total initial cost would be approximately as much as $83.3 million. The cost to upgrade the risk control management systems would be $48.6 million for 1,230 broker-dealers,[73] while the cost to initially develop or modify compliance procedures for the same would be approximately $28,200 per broker-dealer,[74] or $34.7 million for 1,230 broker-dealers. The total initial cost is

[65] 65 broker-dealers × $96,000 (annual cost for a startup contract with a third-party technology provider or service bureau) = $6,240,000.

[66] The Commission estimates that one compliance attorney and one compliance manager would each require 5 hours, for a total initial burden of 10 hours. *See supra* Section V.B.2. The total initial cost for staff is estimated to be 5 hours × $270 (hourly wage for a compliance attorney) + 5 hours × $258 (hourly wage for a compliance manager) = $2,640.

The $270 and $258 per hour estimates for a compliance attorney and compliance manager, respectively, is from SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[67] The Commission estimates that one compliance attorney and one compliance manager would each require 10 hours, while the Chief Executive Officer would require 5 hours, for a total initial burden of 25 hours. *See supra* Section V.B.2. The total initial cost for staff is estimated to be 10 hours × $270 (hourly wage for a compliance attorney) + 10 hours × $258 (hourly wage for a compliance manager) + 5 hours × $4,055 (hourly wage for a Chief Executive Officer) = $25,555.

The $270 and $258 per hour estimates for a compliance attorney and compliance manager, respectively, is from SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. The $4,055 per hour figure for a broker-dealer Chief Executive Officer comes from the median of June 2008 Large Bank Executive Compensation data from TheCorporateLibrary.com, divided by 1800 hours per work-year. We invite comments on whether large bank Chief Executive Officer total compensation is an appropriate proxy for broker-dealer Chief Executive Officer total compensation.

[68] 20 hours (total annual ongoing compliance hourly burden for a compliance attorney) × $270 (hourly wage for a compliance attorney) = $5,400. The $270 per hour estimate for a compliance attorney is from SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[69] 20 hours (total annual ongoing compliance hourly burden for a compliance manager) × $258 (hourly wage for a compliance manager) = $5,160. The $258 per hour estimate for a compliance manager is from SIFMA's Office Salaries in the Securities Industry 2008, modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[70] 5 hours (total annual ongoing compliance hourly burden for a Chief Executive Officer) × $4,055 (hourly wage for a Chief Executive Officer) = $20,275. The $4,055 per hour figure for a broker-dealer Chief Executive Officer comes from the median of June 2008 Large Bank Executive Compensation data from TheCorporateLibrary.com, divided by 1800 hours per work-year. We invite comments on whether large bank Chief Executive Officer total compensation is an appropriate proxy for broker-dealer Chief Executive Officer total compensation.

[71] *See supra* Section VI.B.1.

[72] *See supra* Section VI.B.2.

[73] *See supra* Section VI.B.1.

[74] *See supra* Section VI.B.2.

thus estimated to be approximately $83.3 million.

The total annual initial cost for 1,295 broker-dealers is estimated to be approximately $102.6 million.[75]

The total annual ongoing cost for 1,295 broker-dealers to maintain a risk management control system and annual review and modification of applicable compliance policies and procedures could be approximately as much as $101.1 million. The annual technology cost to maintain a risk management control system would be approximately $47,300 per broker-dealer,[76] or $61.3 million for 1,295 broker-dealers, while the cost for annual review and modification of applicable compliance policies and procedures would be approximately $30,800 per broker-dealer,[77] or $39.9 million for 1,295 broker-dealers. The total annual ongoing cost is estimated to be approximately $101.1 million.

The estimates of the initial and annual burdens are based on discussions with industry participants. The Commission welcomes comments on these estimates.

Based on discussions with industry participants, the Commission is aware that, if the Commission were to adopt the proposed rule, there is a potential for latency, ranging approximately from 200 to 500 microseconds, for orders that currently route to exchanges or ATSs via "naked" access arrangements. The Commission however preliminarily believes that the potential costs associated with the elimination of "unfiltered" access, including the potential for latency, are justified by the overall benefit to the U.S. markets. We solicit comment on the Commission's view. Would the controls imposed by the rule substantially increase latency? To what extent would broker-dealers have greater incentives to reduce any such latency? Would broker-dealers incur additional costs in reducing any such latency? What would be the costs to market participants of any additional latency? Can these costs be quantified?

The Commission is also aware that some broker-dealers may benefit from offering sponsored access because they receive volume discounts offered by exchanges and other market centers due to the trades entered under the broker-dealer's MPID or otherwise. How much would the proposed rules affect the volume discounts enjoyed by broker-dealers? Would this effect differ across broker-dealers? What characteristics impact a broker-dealer's reliance on sponsored access for these volume discounts? How would any effect alter a broker-dealer's business? Can any such costs be quantified?

The Commission seeks comment on any other potential costs to brokers or dealers that may result from the proposed rule. While the Commission does not anticipate that there would be significant adverse consequences to a broker or dealer's business, activities, or financial condition as a result of the proposed rule, it seeks commenters' views regarding the possibility of any such impact. For instance, would the proposed rule impact a broker or dealer's ability to attract or retain its market access customers? Could a broker or dealer lose order flow, because its customer might seek other arrangements in order to access the securities markets, such as becoming a member of a particular exchange or becoming a broker or dealer? The Commission requests for commenters to quantify those costs, where possible.

The Commission preliminarily believes that any additional burden or costs on brokers and dealers who provide market access as a result of the proposed amendments would be justified by the improved market security to brokers, dealers, market participants, the self-regulatory organizations, and the public generally, all of which contribute to investor protection and market integrity. To assist the Commission in evaluating the costs that could result from the proposed rule, the Commission requests comments on the potential costs identified in this proposal, as well as any other costs that could result from the proposed rule. In particular, comments are requested on whether there are costs to any entity not identified above. Commenters should provide analysis and data to support their views on the costs. In particular, the Commission requests comment on the costs of the proposed rule on brokers, dealers, market participants, self-regulatory organizations, as well as any costs on others, including the investor public.

The Commission also requests comment on the following: Would the proposed rule impair the ability of market participants that currently rely on "unfiltered" access to compete? Would the proposed rule have any unintended, negative consequences for the U.S. markets? Would the proposed rule decrease the propensity of market participants that currently rely on "unfiltered" access to provide liquidity to the U.S. markets? Would the proposed rule stifle or impact certain trading strategies that may add value to the market? Would the proposed rule limit price discovery mechanisms?

VII. Consideration of Burden on Competition, and Promotion of Efficiency, Competition and Capital Formation

Section 3(f) of the Exchange Act[78] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. In addition, Section 23(a)(2) of the Exchange Act[79] requires the Commission, when making rules under the Exchange Act, to consider the impact of such rules on competition. Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

A. Competition

We consider in turn the impacts of Proposed Rule 15c3–5 on the market center and broker-dealer industries. Information provided by market centers and broker-dealers in their registrations and filings with us and with FINRA informs our views on the structure of the markets in these industries. We begin our consideration of potential competitive impacts with observations of the current structure of these markets.

The broker-dealer industry, including market makers, is a highly competitive industry, with most trading activity concentrated among several dozen large participants and with thousands of small participants competing for niche or regional segments of the market.

There are approximately 5,178 registered broker-dealers, of which 890 are small broker-dealers.[80] The Commission estimates that 1,295 brokers or dealers would have market access as defined under the proposed rule.[81] Of these 1,295 brokers or dealers, the Commission estimates that approximately 21 of those were small broker-dealers. To limit costs and make business more viable, small broker-

[75] $19.4 million (initial cost for 65 broker-dealers building a system from scratch) + $83.3 million (initial cost for 1,230 broker-dealers upgrading pre-existing systems) = approximately $102.6 million.

[76] *See supra* note 62.

[77] *See supra* notes 68, 69, and 70.

[78] 15 U.S.C. 78c(f).

[79] 15 U.S.C. 78w(a)(2).

[80] These numbers are based on the Commission's staff review of 2007 and 2008 FOCUS Report filings reflecting registered broker-dealers, and discussions with SRO staff. The number does not include broker-dealers that are delinquent on FOCUS Report filings.

[81] *See supra* note 33.

dealers often contract with larger broker-dealers to handle certain functions, such as clearing and execution, or to update their technology. Larger broker-dealers typically enjoy economies of scale over small broker-dealers and compete with each other to service the small broker-dealers, who are both their competitors and their customers.

Proposed Rule 15c3–5 is intended to address a broker-dealer's obligations generally with respect to market access risk management controls across markets, to prohibit the practice of "unfiltered" or "naked" access to an exchange or an ATS where customer order flow does not pass through the broker-dealer's systems or filters prior or to entry on an exchange or ATS, and to provide uniform standards that would be interpreted and enforced in a consistent manner. Such proposed requirements may promote competition by establishing a level playing field for broker-dealers in market access, in that each broker or dealer would be subject to the same requirements in providing access.

The proposed rule would require brokers or dealers that offer market access, including those providing sponsored or direct market access to customers, to implement appropriate risk management controls and supervisory procedures to manage the financial and regulatory risks of this business activity. As noted above, we expect there to be costs of implementing and monitoring these systems. However, we do not believe that these costs will create or increase any burdens of entry into the broker-dealer industry.

The Commission seeks comment on whether or how the proposed rule would affect the competitive landscape in the broker-dealer industry and on whether or how the proposed rule might create new barriers to entry or increase existing barriers to entry in the broker-dealer industry.

The costs to implement appropriate risk management controls and supervisory procedures to manage the financial and regulatory risks may disproportionately impact small- or medium-sized broker-dealers. In particular, the costs of instituting such controls and procedures could be a larger portion of revenues for small- and medium-sized broker-dealers than for larger broker dealers. In addition, to the extent that the cost of obtaining sponsored access increases, the increases could be a larger portion of the revenues of small and medium-sized broker-dealers. This could impair the ability of small- and medium-sized broker-dealers to compete for order routing business with larger firms, limiting choice and incentives for innovation in the broker dealers industry. However, the effect on smaller broker-dealers could be mitigated, to some extent, by purchasing a risk management solution from a third-party vendor.

We do not believe that the proposed rule will alter the competitive landscape in the competition between large broker-dealers and small and medium broker-dealers. However, we request comment on the following questions:

How common is it for smaller broker-dealers to offer sponsored access or direct market access? If smaller broker-dealers provide this service, would costs of implementing and complying with the proposed rule be particularly burdensome for them? Could the proposed rule impair the ability of small- and medium-sized broker-dealers to compete for order routing business with larger firms, limiting choice and incentives for innovation in the broker-dealer industry, because it would not be cost effective for them to implement the required risk management controls and supervisory procedures?

How common is it for smaller broker-dealers to be the sponsored participants for larger broker-dealers? If this is common, would the rule affect the ability of these smaller broker-dealers to access markets? If so, in what ways and to what extent? How would any such effects impact the securities markets more generally? If it is common for smaller broker-dealers to offer or purchase market access, would the rule adversely affect the ability of smaller broker-dealers to compete or the level of service that they can provide to their customers?

Would the Proposed Rule 15c3–5 create vertical integration in the industry, by inducing large customers (non-members) to acquire and integrate with broker-dealers? Would this potential outcome have an impact on competition in the industry?

What are the types of customers who use sponsored access or direct market access? Would this rule affect the competitive landscape for any of these customer types? Would the rule affect the competitive landscape for any other market participants, including market makers?

In addition, the Commission is mindful of a potential race-to-the-bottom issue in which broker-dealers competing for sponsored access or direct market access clients with low prices will skimp on spending for risk controls. Will the proposed rule help to halt or encourage such a "race to the bottom"?

The trading industry is a highly competitive one, characterized by ease of entry. In fact, the intensity of competition across trading platforms in this industry has increased dramatically in the past decade as a result of market reforms and technological advances. This increase in competition has resulted in substantial decreases in market concentration, effective competition for the securities exchanges, a proliferation of trading platforms competing for order flow, and significant decreases in trading fees. The low barriers to entry for equity trading venues are shown by new entities, primarily ATSs, continuing to enter the market. Currently, there are approximately 50 registered ATSs that trade equity securities. In addition, the Commission within the past few years has approved applications by two entities—BATS and Nasdaq—to become registered as national securities exchanges for trading equities, and approved proposed rule changes by two existing exchanges—ISE and CBOE—to add equity trading facilities to their existing options business. We believe that competition among trading centers has been facilitated by Rule 611 of Regulation NMS,[82] which encourages quote-based competition between trading centers; Rule 605 of Regulation NMS,[83] which empowers investors and broker-dealers to compare execution quality statistics across trading centers; and Rule 606 of Regulation NMS,[84] which enables customers to monitor order routing practices.

Market centers compete with each other in several ways. National exchanges compete to list securities; market centers compete to attract order flow to facilitate executions; and market centers compete to offer access to their markets to members or subscribers. In this last area of competition, one could argue that the ability to access a market through sponsored access or direct market access could substitute for becoming a member or subscriber. Of course, there are both benefits and responsibilities in being a member or subscriber that do not accrue directly to someone using sponsored access or direct market access. Nonetheless, to the extent that these forms of market access are substitutes for membership, an increase in the costs of sponsored access or direct market access may make a potential member more likely to decide to become a member or subscriber. At the same time, market centers may reduce the cost of access to members or

[82] 17 CFR 242.611.

[83] 17 CFR 242.605.

[84] 17 CFR 242.606.

subscribers in order to attract trading flow to their venue.

We request comment on the following questions: Would the Proposed Rule 15c3–5 modify the competition among market centers and broker-dealers to obtain members or offer sponsored access? What are the benefits of being a member or subscriber to a market center that would not be available to someone with sponsored access or direct market access? Would the proposed rule increase or decrease the propensity of broker-dealers and others to become members or subscribers? Would the proposed rule increase or decrease the propensity of non-broker-dealer market participants to register to become broker-dealers? How would the proposed rule affect overall access to markets? Would the proposed rule affect any other type of competition between market centers?

B. Capital Formation

The Commission believes that the proposed rule would have a minimal impact on the promotion of capital formation. We request comment on the following questions: By requiring financial and regulatory controls to be implemented on a market-wide basis to reduce the risks faced by broker-dealers, and by prohibiting "unfiltered" or "naked" access, would Proposed Rule 15c3–5 promote capital formation? If so, to what extent? Would the proposed rule promote investor protection, which could, in turn, make investors more willing to invest and promote capital formation? Are there any other impacts of the proposed rule on capital formation? To the extent that the proposed requirements impact trading strategies or other behavior, how might that impact capital formation?

C. Efficiency

By proposing to address broker-dealer obligations with respect to market access risk controls across markets, and by having the effect of prohibiting "unfiltered" or "naked" access, the proposed rule would provide uniform standards that would be interpreted and enforced in a consistent manner. Proposed Rule 15c3–5 would help to facilitate and maintain stability in the markets and help ensure that they function efficiently.

In recent years, the development and growth of automated electronic trading has allowed ever increasing volumes of securities transactions across the multitude of trading centers that constitute the U.S. national market system. The Commission believes that the risk management controls and procedures that brokers and dealers would be required to include as part of their compliance systems should prevent erroneous and unintended trades from occurring and thereby contribute to overall market efficiency.

While the Commission has consistently sought to encourage innovations that enhance the efficiency and quality of the markets, it also must assure that the regulatory framework keeps pace with market developments so that emerging risks are effectively addressed. The Commission believes that safer transactions—and the anticipated increased confidence in the markets—should promote greater efficiency in the long run. The Commission is aware of concerns that pre-trade controls potentially could slow down the speed of order routing and the incorporation of information into prices, but the Commission notes that such concerns should be balanced against the Commission's goals, as mandated by the Exchange Act, including to promote the integrity of the markets and investor protection. We request comment on the following questions:

How would Proposed Rule 15c3–5 affect price efficiency? Would pre-trade reviews limit unlawful or erroneous trading? To what extent would limits on erroneous trading improve price efficiency? To what extent would the pre-trade reviews reveal other trading that could affect price efficiency? To what extent would the controls imposed by the rule create latency that can slow the incorporation of information into prices? To what extent would broker-dealers have greater incentives to reduce any such latency?

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA," [85] the Commission must advise OMB as to whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation. If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

The Commission requests comment on the potential impact of the proposed rule on the economy on an annual basis, on the costs or prices for consumers or individual industries, and on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

IX. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis ("IRFA"), in accordance with the provisions of the Regulatory Flexibility Act ("RFA"),[86] regarding proposed new Rule 15c3–5 under the Securities Exchange Act of 1934.

A. Reasons for the Proposed Action

Over the past decade, the proliferation of sophisticated, high-speed trading technology has changed the way broker-dealers trade for their accounts and as an agent for their customers. Current SRO rules and interpretations governing electronic access to markets have sought to address the risks of this activity. However, the Commission preliminarily believes that more comprehensive standards that apply consistently across the markets are needed to effectively manage the financial, regulatory, and other risks, such as legal and operational risks, associated with market access.

The Commission notes that these risks are present whenever a broker-dealer trades as a member of an exchange or subscriber to an ATS, whether for its own proprietary account or as agent for its customers, including traditional agency brokerage and through direct market access or sponsored access arrangements. For this reason, proposed new Rule 15c3–5 is drafted broadly to cover all forms of access to trading on an exchange or ATS provided directly by a broker-dealer. The Commission believes a broker-dealer with market access should assure the same basic types of controls are in place whenever it uses its special position as a member of an exchange, or subscriber to an ATS, to access those markets. The Commission, however, is particularly concerned about the quality of broker-dealer risk controls in sponsored access arrangements, where the customer order flow does not pass through the broker-dealer's systems prior to entry on an exchange or ATS.

B. Objectives

Proposed Rule 15c3–5 would apply to any broker or dealer that has access to

[85] Pub. L. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[86] 5 U.S.C. 603(a).

trading in securities on an exchange or ATS as a result of being a member or subscriber of the exchange or ATS, respectively. As noted above, the proposed rule would include not only direct market access or sponsored access services offered to customers of broker-dealers, but also access to trading for the proprietary account of the broker-dealer and for more traditional agency activities. The Commission believes that any broker-dealer with market access should establish effective risk management controls to protect against breaches of credit or capital limits, erroneous trades, violations of SEC or exchange trading rules, and the like.

Proposed Rule 15c3–5 would require a broker or dealer with market access, or that provides a customer or any other person with access to an exchange or ATS through use of its MPID or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks related to market access. The proposed rule would apply to trading in all securities on an exchange or ATS, including equities, options, exchange-traded funds, and debt securities. Specifically, the proposed rule would require that brokers or dealers with access to trading securities on an exchange or ATS, as a result of being a member or subscriber thereof, establish, document, and maintain a system of risk management controls and supervisory procedures that, among other things, are reasonably designed to (1) systematically limit the financial exposure of the broker or dealer that could arise as a result of market access, and (2) ensure compliance with all regulatory requirements that are applicable in connection with market access.

The required financial risk management controls would be required to be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds, or that appear to be erroneous. The required regulatory risk management controls and supervisory procedures would also be required to be reasonably designed to prevent the entry of orders that fail to comply with any regulatory requirements that must be satisfied on a pre-order entry basis, prevent the entry of orders that the broker-dealer or customer is restricted from trading, restrict market access technology and systems to authorized persons, and assure appropriate surveillance personnel receive immediate post-trade execution reports. For example, such systems would block orders that do not comply with exchange trading rules relating to special order types and odd-lot orders, among others.

The proposed requirement that a broker-dealer's financial and regulatory risk management controls and procedures be reasonably designed to prevent the entry of orders that fail to comply with the specified conditions would necessarily require the controls be applied on an automated, pre-trade basis before orders route to an exchange or ATS, thereby effectively prohibiting the practice of "unfiltered" or "naked" access to an exchange or ATS.

The risk management controls and supervisory procedures required by proposed Rule 15c3–5 must be under the direct and exclusive control of the broker or dealer with market access. This provision is designed to eliminate the practice, which the Commission understands exists today under current SRO rules, whereby the broker-dealer providing market access relies on its customer, a third party service provider, or others, to establish and maintain the applicable risk controls. The Commission believes the risks presented by market access—and in particular "naked" access—are too great to permit a broker-dealer to delegate the power to control those risks to the customer or to a third party, either of whom may be an unregulated entity.

C. Legal Basis

Pursuant to the Exchange Act and particularly, Sections 2, 3(b), 11A, 15, 17(a) and (b), and 23(a) thereof, 15 U.S.C. 78b, 78c(b), 78k–1, 78o, 78q(a) and (b), and 78w(a), the Commission is proposing new Rule 15c3–5.

D. Small Entities Subject to the Rule

For purposes of Commission rulemaking in connection with the RFA, a broker-dealer is a small business if its total capital (net worth plus subordinated liabilities) on the last day of its most recent fiscal year was $500,000 or less, and is not affiliated with any entity that is not a "small business." [87] The Commission staff estimates that at year-end 2008 there were 1,095 broker or dealers which were members of an exchange, and 21 of those were classified as "small businesses." [88] In addition, the Commission estimates that there were 200 brokers or dealers that were subscribers to ATSs but not members of an exchange.[89] The Commission estimates that, of those 200 brokers or dealers, only a small number would be classified as "small businesses."

Currently, most small brokers or dealers, when accessing an exchange or ATS in the ordinary course of their business, should already have risk management controls and supervisory procedures in place. The extent to which such small brokers or dealers would be affected economically under the proposed rule would depend significantly on the financial and regulatory risk management controls that already exist in the broker or dealer's system, as well as the nature of the broker or dealer's business. In many cases, the proposed rule may be substantially satisfied by a small broker-dealer's pre-existing financial and regulatory risk management controls and current supervisory procedures. Further, staff discussions with various industry participants indicated that very few, if any, small broker-dealers with market access provide other persons with "unfiltered" access, which may require more significant systems upgrades to comply with the proposed rule. Therefore, these brokers or dealers should only require limited updates to their systems to meet the requisite risk management controls and other requirements in the proposed rule. The proposed rule also would impact small brokers or dealers that utilize risk management technology provided by a vendor or some other third party; however, the proposed requirement to directly monitor the operation of the financial and regulatory risk management controls should not impose a significant cost or burden because the Commission understands that such technology allows the broker or dealer to exclusively manage such controls.[90]

E. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule would require brokers or dealers to establish, document, and maintain certain risk management controls and supervisory procedures as well as regularly review such controls and procedures, and document the review, and remediate issues discovered to assure overall effectiveness of such controls and procedures. Each such broker or dealer would be required to preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act. Such regular review would be required to be conducted in accordance with written

[87] 17 CFR 240.0–10(c).

[88] *See supra* note 33.

[89] *Id.*

[90] The Commission's understanding is based on discussions with various industry participants.

procedures and would be required to be documented. The broker or dealer would be required to preserve a copy of such written procedures, and documentation of each such review, as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act, and Rule 17a–4(b) under the Exchange Act, respectively.

In addition, the Chief Executive Officer (or equivalent officer) would be required to certify annually that the broker or dealer's risk management controls and supervisory procedures comply with the proposed rule, and that the broker-dealer conducted such review. Such certifications would be required to be preserved by the broker or dealer as part of its books and records in a manner consistent with Rule 17a–4(b) under the Exchange Act. Most small brokers or dealers currently should already have supervisory procedures and record retention systems in place. The proposed rule would require small brokers or dealers to update their procedures and perform additional internal compliance functions. Based on discussions with industry participants and the Commission's prior experience with broker-dealers, the Commission estimates that implementation of a regular review, modification of applicable compliance policies and procedures, and preservation of such records would require, on average, 45 hours of compliance staff time for brokers or dealers depending on their business model.[91] The Commission believes that the business models of small brokers or dealers would necessitate less than the average of 45 hours. We request comments on these estimates.

F. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no Federal rules that duplicate, overlap, or conflict with the proposed rule amendments and the proposed new rule.

G. Significant Alternatives

Pursuant to Section 3(a) of the Regulatory Flexibility Act,[92] the Commission must consider certain types of alternatives, including: (1) The establishment of differing compliance or recording requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part of the rule, for small entities.

The Commission considered whether it would be necessary or appropriate to establish different compliance or reporting requirements or timetables; or to clarify, consolidate, or simplify compliance and reporting requirements under the rule for small entities. Because the proposed rule is designed to mitigate, as discussed in detail throughout this release, significant financial and regulatory risks, the Commission preliminarily believes that small entities should be covered by the rule. The proposed rule includes performance standards. The Commission also preliminarily believes that the proposed rule is flexible enough for small brokers and dealers to comply with the proposed rule without the need for the establishment of differing compliance or reporting requirements for small entities, or exempting them from the proposed rule's requirements.

H. Request for Comments

The Commission encourages written comments on matters discussed in this IRFA. In particular, the Commission seeks comment on the number of small entities that would be affected by the proposed new rule, and whether the effect on small entities would be economically significant. Commenters are asked to describe the nature of any impact on small entities, including broker-dealers or other small businesses or small organizations, and provide empirical data to support their views.

X. Statutory Authority

Pursuant to the Exchange Act and particularly, Sections 2, 3(b), 11A, 15, 17(a) and (b), and 23(a) thereof, 15 U.S.C. 78b, 78c(b), 78k–1, 78o, 78q(a) and (b), and 78w(a), the Commission proposes a new Rule 15c3–5 under the Exchange Act that would require broker-dealers with market access, or that provide a customer or any other person with market access through use of its market participant identifier or otherwise, to establish appropriate risk management controls and supervisory systems.

XI. Text of Proposed Rule

List of Subjects in 17 CFR Part 240

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, 17 CFR Part 240 is proposed to be amended as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Section 240.15c3–5 is added to read as follows:

§ 240.15c3–5 Risk management controls for brokers or dealers with market access.

(a) For the purpose of this section:

(1) The term *market access* shall mean access to trading in securities on an exchange or alternative trading system as a result of being a member or subscriber of the exchange or alternative trading system, respectively.

(2) The term *regulatory requirements* shall mean all Federal securities laws, rules and regulations, and rules of self-regulatory organizations, that are applicable in connection with market access.

(b) A broker or dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier or otherwise, shall establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of this business activity. Such broker or dealer shall preserve a copy of its supervisory procedures and a written description of its risk management controls as part of its books and records in a manner consistent with § 240.17a–4(e)(7).

(c) The risk management controls and supervisory procedures required by paragraph (b) of this section shall include the following elements:

(1) *Financial risk management controls and supervisory procedures.* The risk management controls and supervisory procedures shall be reasonably designed to systematically limit the financial exposure of the broker or dealer that could arise as a result of market access, including being reasonably designed to:

(i) Prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer and, where appropriate, more finely-tuned by sector, security, or otherwise

[91] *See supra* Section V.D.2.

[92] 5 U.S.C. 603(c).

by rejecting orders if such orders would exceed the applicable credit or capital thresholds; and

(ii) Prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

(2) *Regulatory risk management controls and supervisory procedures.* The risk management controls and supervisory procedures shall be reasonably designed to ensure compliance with all regulatory requirements, including being reasonably designed to:

(i) Prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis;

(ii) Prevent the entry of orders for securities for a broker or dealer, customer, or other person if such person is restricted from trading those securities;

(iii) Restrict access to trading systems and technology that provide market access to permit access only to persons and accounts pre-approved and authorized by the broker or dealer; and

(iv) Assure that appropriate surveillance personnel receive immediate post-trade execution reports that result from market access.

(d) The financial and regulatory risk management controls and supervisory procedures described in paragraph (c) of this section shall be under the direct and exclusive control of the broker or dealer that is subject to paragraph (b) of this section.

(e) A broker or dealer that is subject to paragraph (b) of this section shall establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures required by paragraphs (b) and (c) of this section and for promptly addressing any issues.

(1) Among other things, the broker or dealer shall review, no less frequently than annually, the business activity of the broker or dealer in connection with market access to assure the overall effectiveness of such risk management controls and supervisory procedures. Such review shall be conducted in accordance with written procedures and shall be documented. The broker or dealer shall preserve a copy of such written procedures, and documentation of each such review, as part of its books and records in a manner consistent with § 240.17a–4(e)(7) and § 240.17a–4(b), respectively.

(2) The Chief Executive Officer (or equivalent officer) of the broker or dealer shall, on an annual basis, certify that such risk management controls and supervisory procedures comply with paragraphs (b) and (c) of this section, and that the broker or dealer conducted such review, and such certifications shall be preserved by the broker or dealer as part of its books and records in a manner consistent with § 240.17a–4(b).

By the Commission.

Dated: January 19, 2010.

Florence E. Harmon,

Deputy Secretary.

Note: This Appendix to the Preamble will not appear in the Code of Federal Regulation.

Appendix

A. Current SRO Guidance

The New York Stock Exchange ("NYSE") and the Financial Industry Regulatory Authority ("FINRA") (formerly known as the National Association of Securities Dealers, Inc. ("NASD")) [1] have issued several Information Memoranda ("IM") and Notices to Members ("NTM"), respectively, that are designed to provide guidance to their members that provide market access to customers. The guidance provided by the NYSE and the NASD is primarily advisory, as opposed to compulsory, and is similar in many respects. As discussed in more detail below, both SROs emphasize the need for members to implement and maintain internal procedures and controls to manage the financial and regulatory risks associated with market access, and recommend certain best practices.[2]

1. NYSE Guidance

In 1989, the NYSE first issued an IM to provide guidance for its members that permitted customers to access the NYSE SuperDot System.[3] NYSE IM–89–6 stated that it was permissible for members to receive electronic orders directly from their customers and re-transmit those orders to the NYSE's SuperDot system, but that members providing such access must satisfy all regulatory requirements relating to those orders.[4]

In 1992, the NYSE issued NYSE IM–92–15 [5] which stated that members should have written procedures and controls for the monitoring and supervision of electronic orders, including those that limit access to electronic order entry systems to authorized users, validate order accuracy, and check the order against established credit limits. The NYSE indicated that either the customer or the member could establish the necessary controls, but that the member would be ultimately responsible for maintaining and implementing them. Later that year, NYSE IM–92–43,[6] was issued and stressed the importance of effective policies and procedures designed to minimize errors associated with electronic order entry.[7]

In 2002, NYSE IM–02–48 was issued to re-emphasize member obligations related to the submission of electronic orders.[8] The NYSE noted that electronic order entry systems could lead to increased market volatility and significant exposure to financial risk for members, and thus members were required to have written internal control and supervisory procedures addressing those risks. The NYSE indicated that these should, at a minimum, incorporate controls to: (1) Limit the use of the system to authorized persons; (2) validate

[1] In 2007, the NASD and the member-related functions of New York Stock Exchange Regulation, Inc., the NYSE's regulatory subsidiary, were consolidated. As part of this regulatory consolidation, the NASD changed its name to FINRA. For clarity, this release uses the term "NASD" to refer to matters that occurred prior to the consolidation and the term "FINRA" to refer to matters that occurred after the consolidation.

[2] The Commission notes that the collective NASD and NYSE guidance described below now constitutes FINRA's current guidance on market access.

[3] *See* NYSE IM–89–6 (January 25, 1989).

[4] The NYSE specifically referenced NYSE Rule 405 pertaining to Diligence as to Accounts, and NYSE Rule 382, pertaining to Carrying Agreements. The NYSE also stated that a member's "know your customer" obligations had to be satisfied either through conventional methods or through automated system parameters. In NYSE IM–89–6, the NYSE required its members to provide a written statement acknowledging their responsibility for electronic customer orders retransmitted to the NYSE. *Id.*

[5] NYSE IM–92–15 (May 28, 1992). In NYSE IM–92–15, the NYSE recognized that the "ongoing need to enhance efficiency and to facilitate the swift and orderly processing and execution of orders * * * [had] led to the development and increased usage of electronic order routing systems by member organizations." However, the NYSE also warned that while technological developments facilitated the handling of a significantly higher order volume, it also increased the prospect of order errors and concerns regarding sufficient internal controls. Accordingly, the NYSE advised that internal control procedures were important elements of any electronic trading system and reaffirmed that members must adhere to certain regulatory requirements and business practices when permitting access to electronic order routing systems.

[6] NYSE IM–92–43 (December 29, 1992).

[7] NYSE IM–92–43 emphasized that the member was responsible for assuring that control procedures, whether established by the customer or the member, were reasonably expected to monitor and supervise the entry of orders and minimize the potential for errors. The NYSE also clarified that members should obtain and maintain, as part of their books and records, a copy of their customer's written control procedures pertaining to electronic order entry. If the control procedures were established by the member, the customer should sign an undertaking committing to adhere to them. The NYSE also noted that built-in system checks, such as pre-set size and dollar limits, were an alternative way to satisfy the control requirements. *Id.*

[8] NYSE IM–02–48 (November 7, 2002). NYSE noted that there were a number of erroneous orders submitted via electronic order entry systems as a result of human error or defective commercial or proprietary software systems, and that the errors most commonly involved an incorrect quantity of shares being submitted, or the inadvertent release of files containing previously transmitted orders. Moreover, the NYSE emphasized the need for safeguards to prevent the disabling of the systemic controls or the system whether the system was provided by the member, a vendor, the customer or another third party. *Id.*

order accuracy; (3) establish credit limits or systematically prevent the transmission of orders exceeding preset credit or order size parameters; and (4) monitor for duplicative orders. If a member used a vendor's order entry system, the NYSE stressed that it was the member's responsibility to ensure that the requisite controls were in place. If relying on the customer's controls, members were reminded that they had to obtain, for books and records purposes, the customer's written control procedures and a written undertaking to provide the member with written notification of any significant changes to such procedures.

2. NASD Guidance

The NASD offered its initial guidance on market access in 1998, when it issued NASD NTM–98–66 [9] to address a variety of issues for NASD members to consider if they chose to allow customers to route orders to Nasdaq through member systems.[10] Among other things, the NASD affirmed that members were responsible for honoring all executions that occurred as a result of market access,[11] and should perform appropriate due diligence of customers for which they offer this service.

The NASD also stated that members should have adequate written procedures and controls to effectively monitor and supervise order entry by customers. Specifically, the NASD indicated that members' controls should address: (1) The entry of unauthorized orders; (2) orders that exceed or attempt to exceed pre-set credit or other parameters, such as order size, established by the member; (3) potentially manipulative activity by electronic access customers; (4) potential violations of affirmative determination requirements [12] and short-sale rules. More generally, NASD stated that members should ensure compliance with SEC and NASD rules, and that "whenever possible * * * controls should be automated and system driven." [13] Finally, the NASD required a signed agreement setting forth the responsibilities of both the member and the non-member customer with respect to the access arrangement.[14]

In 2004, in response to an increase in order entry errors by non-member customers, NASD issued NTM–04–66 [15] to remind members of their responsibility for all orders entered under their MPID, and that reasonable steps should be taken to address order entry errors.[16] The NASD advised that a member's supervisory system and written supervisory procedures should be consistent with the NASD's supervision rule, Rule 3010,[17] and related guidance provided in a variety of NTMs.[18] The NASD further noted that members should consider, when developing a supervisory system and written supervisory procedures, controls that: (1) Limit the use of electronic order entry systems to authorized persons; (2) check for order accuracy; (3) prevent orders that exceed preset credit- and order-size parameters from being transmitted to a trading system; and (4) prevent the unwanted generation, cancellation, re-pricing, resizing, duplication, or re-transmission of orders.[19] Finally, the NASD reminded members that it would closely examine the supervisory systems and written supervisory procedures of members with respect to the review and detection of potential order-entry errors and, where appropriate, initiate disciplinary action against firms and their supervisory personnel.

B. Exchange Rules

The exchanges each have adopted rules that, in general, permit non-member "sponsored participants" to obtain direct access to the exchange's trading facilities, so long as a sponsoring broker-dealer that is a member of the exchange takes responsibility for the sponsored participant's trading, and certain contractual commitments are made.[20] The required contractual commitments typically entail agreements by the sponsored participant to: (1) Comply with exchange rules as if it were a member; (2) provide the sponsoring broker-dealer a current list of all "authorized traders" who may submit orders to the exchange, and restrict access to the order entry system to those persons; (3) take responsibility for all trading by its authorized traders (and anyone else using their passwords); (4) establish adequate procedures to effectively monitor and control its access to the exchange through its employees, agents, or customers; and (5) pay when due all amounts payable to the exchange, the sponsoring broker-dealer, or others that arise from its access to the exchange's trading facilities.

C. New Nasdaq Rule

As noted above, to address the increasing risks associated with market access, Commission staff has been urging the securities industry, the exchanges, FINRA and other market participants to enhance exchange and FINRA rules by requiring more robust broker-dealer financial and regulatory risk controls. In December 2008, Nasdaq filed a proposed rule change to require broker-dealers offering direct market access or sponsored access to Nasdaq to establish controls regarding the associated financial and regulatory risks, and to obtain a variety of contractual commitments from sponsored access customers.[21] The Commission

[9] *See* Securities Exchange Act Release No. 40354 (August 24, 1998), 63 FR 46264 (August 31, 1998) (NASD NTM–98–66).

[10] NASD NTM–98–66 elaborated on the NASD's April 1998 Nasdaq interpretive letter regarding non-member access to SelectNet. In particular, NASD expanded the discussion to address non-member access to Nasdaq's Small Order Execution System ("SOES"). The systems were discussed separately because SOES was an automatic execution facility while SelectNet was an order-delivery facility. *Id.*

[11] The NASD required its members to provide a letter to Nasdaq acknowledging responsibility for non-member orders submitted through the member's system. *Id.*

[12] Formerly, NASD Rule 3370(b)(2)(A) stated, in part, that "[n]o member or person associated with a member shall accept a 'short' sale order for any customer * * * in any security unless the member or person associated with a member makes an affirmative determination that the member will receive delivery of the security from the customer * * * or that the member can borrow the security on behalf of the customer * * * for delivery by settlement date." *See* former NASD Rule 3370(b)(2)(A). In 2004, NASD Rule 3370(b) was repealed because it was deemed to overlap with and be duplicative of Rule 203 of Regulation SHO. *See* Securities Exchange Act Release No. 50822 (December 8, 2004), 69 FR 74554 (December 14, 2004) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Repeal of Existing NASD Short Sale Rules in Light of SEC Regulation SHO).

[13] The NASD also required that members provide a description of the system that permitted a non-member's access to Nasdaq execution facilities, including details on how orders were received and re-transmitted, the system's security and capacity, the manner that the system connected to Nasdaq, and any internal system protocols designed to fulfill the member's "know your customer" obligations and other regulatory obligations. *See supra* note 10.

[14] Among other things, the agreement informed the customer of its potential liability under Federal securities laws for any illegal trading activity, and of NASD surveillance to detect any illegal trading activity. *Id.*

[15] NASD NTM–04–66 (September 2004).

[16] The NASD noted that order entry errors typically resulted from mistakes in data entry or malfunctioning software. *Id.*

[17] NASD Rule 3010 has not yet been consolidated as a FINRA rule; it is currently included in the FINRA Transitional Rulebook.

[18] *See* NASD NTMs 88–84 (November 1988), 89–34 (April 1989), 98–96 (December 1998), and 99–45 (June 1999). A FINRA Information Notice, dated December 8, 2008, clarified that the NASD Rules generally apply to all FINRA member firms.

[19] NASD further suggested members consider, among other things, safeguards that ensure that the testing or maintenance of a firm's trading system does not result in inadvertent errors. *See supra* note 15.

[20] *See, e.g.,* NYSE Rule 123B.30, NYSE Alternext Equities Rule 123B.30, NYSE Amex Rule 86, NYSE Arca Rules 7.29 and 7.30, NYSE Rule 86, CBOE Rule 6.20A, CHX Article 5, Rule 3, NSX Rule 11.9, BATS Rule 11.3(b), ISE Rule 706, NASDAQ Rule 4611(d), NASDAQ OMX BX Rule 4611(d), NASDAQ OMX PHLX Rule 1094(b)(ii).

[21] *See* Securities Exchange Act Release No. 59275 (January 22, 2009), 74 FR 5193 (January 29, 2009) (File No. SR–NASDAQ–2008–104). After publication the Commission received thirteen comment letters on the proposal. The majority of commenters supported the proposal conceptually, but critiqued certain aspects of it. A few commenters wholly opposed Nasdaq's proposal because they believed Nasdaq's current rule was sufficient. One commenter opposed the current proposal because it lacked rigor. The various comments addressed: (1) The scope of the proposed Nasdaq rule and the definitions contained therein; (2) the required contracts; (3) compliance with financial and regulatory controls, and (4) confidentiality and regulatory propriety. Letters to Elizabeth M. Murphy, Secretary, Commission, from Harvey Cloyd, Chief Executive Officer, Electronic Transaction Clearing, Inc., dated February 5, 2009; John Jacobs, Director of Operations, Lime Brokerage LLC, dated February 17, 2009 ("Lime Letter"); Manisha Kimmel, Executive Director, Financial Information Forum, dated February 19, 2009 ("FIF Letter"); Ted Myerson, President, FTEN, Inc., dated February 19, 2009 ("FTEN Letter"); Michael A. Barth, Executive Vice President, OES Market Group, dated February 23, 2009; Jeff Bell, Executive Vice President, Clearing and Technology Group, Wedbush Morgan Securities, dated February 23, 2009; Stuart J. Kaswell, Executive Vice President & General Counsel, Managed Funds Association, dated February 24, 2009; Ann Vlcek, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated February 26, 2009 ("SIFMA Letter"), Nicole Harner Williams, Vice President, Associate General Counsel, Penson Financial

approved Nasdaq's improved market access rule on January 13, 2010.[22]

The Nasdaq rule requires a combination of contractual provisions, financial controls, and regulatory controls for Nasdaq members providing direct market access or sponsored access. Nasdaq's rule differs from its previous access rule, and other SRO access rules, by: (1) Clearly defining "direct market access" and "sponsored access;" (2) requiring by rule that broker-dealers providing those services establish controls designed to address specified financial and regulatory risks; (3) requiring that appropriate supervisory personnel of the sponsoring member receive immediate post-trade execution reports for all direct market access and sponsored access customers.[23]

With respect to controls for financial risk, Nasdaq's rule requires members offering direct market access or sponsored access to establish procedures and controls designed to systemically limit the sponsoring member's financial exposure.[24] At a minimum, these procedures and controls must be designed to prevent sponsored customers from: (1) Entering orders that exceed appropriate preset credit thresholds; (2) trading products that the sponsored customer or sponsoring member is restricted from trading; and (3) submitting erroneous orders, by rejecting orders that exceed certain price or size parameters or that indicate duplicative orders.[25]

With respect to controls for regulatory risk, Nasdaq's rule requires members offering direct market access or sponsored access to establish systemic controls designed to ensure compliance with applicable regulatory requirements.[26] In addition, Nasdaq's rule requires a sponsoring member to ensure that appropriate supervisory personnel receive and review timely reports of all trading activity by its sponsored customers, including immediate post-trade execution reports.[27]

[FR Doc. 2010–1269 Filed 1–25–10; 8:45 am]

BILLING CODE 8011–01–P

POSTAL SERVICE

39 CFR Part 111

Streamlining Hard-Copy Postage Statement Processing

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service™ is proposing to revise *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), to reflect changes in the processing of hard-copy postage statements accompanying commercial and permit imprint mailings at *PostalOne!*® facilities.

DATES: We must receive your comments on or before February 25, 2010.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza, SW., Room 3436, Washington, DC, 20260–3436. You may inspect and photocopy all written comments at USPS Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday. E-mail comments concerning the proposed rule, containing the name and address of the commenter, may be sent to: *MailingStandards@usps.gov,* with a subject line of "Postage Statement Processing." Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Cher Rupp-Ruggeri at 202–268–4019, Anthony Frost at 202–268–8093, or Michael F. Lee at 202–268–7263.

SUPPLEMENTARY INFORMATION: In coordination with ongoing efforts to improve efficiencies of USPS® business mail acceptance operations, the Postal Service proposes to revise its procedures and policies relating to the processing of postage statements in facilities with *PostalOne!*® capability.

The *PostalOne!* system, which can be accessed by business customers as well as by postal employees, is an automated, streamlined method of managing the business mail acceptance process. Expanded use of *PostalOne!* allows the Postal Service to contain costs and provide greater visibility and ease of use to the mailing community.

With this proposal, the Postal Service would not complete the "USPS Use Only" section of, or round date, hard-copy postage statements (including duplicates) accompanying mailings accepted at *PostalOne!* facilities. Mailers with *PostalOne!* access would obtain documentation of their mailings by accessing their account via the Business Customer Gateway. Additional information on the Business Customer Gateway is found at *https://gateway.usps.com/bcg* or by contacting their district Manager, Business Mail Entry.

In the upcoming March 15, 2010 release of *PostalOne!,* PS Form 3607, *Weighing and Dispatch Certificate,* would be revised and re-titled PS Form 3607–R, *Mailing Transaction Receipt.*

Any mailing entered at other than single-piece prices and all permit imprint mailings must be accompanied by a postage statement. In accordance with current mailing standards, hard-copy postage statements must be completed and signed by the mailer or agent. Postal facilities with *PostalOne!* capability would enter mailing data electronically and produce a PS Form 3607–R to document the mailing. Upon request, a mailer could obtain a copy of PS Form 3607–R after acceptance and verification are completed. PS Form 3607–R would not be mailed.

There would be no changes in acceptance/postage statement processes for mailings accepted at Post Offices™ without *PostalOne!* access.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410 (a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of*

Services, Inc., dated February 27, 2009; Samuel F. Lek, Chief Executive Officer, Lek Securities Corporation, dated June 15, 2009; letter to David S. Shillman, Associate Director, Division of Trading and Markets ("Division") Commission, from Gary LaFever, Chief Corporate Development Officer, FTEN, Inc., dated April 29, 2009; letter to James Brigagliano, Co-Acting Director, Division, Commission, from John Jacobs, Chief Operations Officer, Lime Brokerage LLC, dated June 30, 2009; and letter to David S. Shillman, Associate Director, Division, from Ann Vlcek, Managing Director and Associate General Counsel, SIFMA, dated November 23, 2009. Nasdaq amended the filing and responded to comments. *See* File No. SR–NASDAQ–2008–104, Amendments No. 2 and 3, received respectively on October 19 and 23, 2009. A more extensive summary of comments and NASDAQ's response to comments is contained in the Nasdaq Market Access Approval Order. *See* Securities Exchange Act Release No. 61345 (January 13, 2010) ("Nasdaq Market Access Approval Order").

[22] *See* Nasdaq Market Access Approval Order, *supra* note 21.

[23] For sponsored access arrangements, the Nasdaq rule also requires sponsoring members to obtain certain contractual commitments from sponsored participants that echo those required by current exchange rules, and go further by requiring the sponsored participant (1) provide access to books and records, financial information and otherwise cooperate with the sponsoring member for regulatory purposes; (2) maintain its trading activity within the credit thresholds set by the sponsoring member; and (3) allow immediate termination of the access arrangement if it poses serious risk to the sponsoring member or the integrity of the market. *See* Nasdaq Rule 4611(d)(3)(A). In addition, if a service bureau or other third party provides the sponsored access system, the sponsoring member must obtain contractual commitments from the third party analogous to clauses (1) and (3) above, as well as to restrict access to authorized persons. *See* Nasdaq Rule 4611(d)(3)(B).

[24] *See* Nasdaq Rule 4611(d)(4).

[25] *See* Nasdaq Rule 4611(d)(4)(A)–(C).

[26] The Nasdaq rule defines "regulatory requirements" to include all applicable Federal securities laws and rules and Nasdaq rules, including but not limited to the Nasdaq Certificate of Incorporation, Bylaws, Rules and Nasdaq Market Center procedures. *See* Nasdaq Rule 4611(d)(3)(i).

[27] The immediate post-trade execution reports should include the identity of the applicable sponsored customer. In addition, appropriate supervisory personnel of the sponsoring member should receive all required audit trail information no later than the end of the trading day; and all information necessary to create and maintain the trading records required by regulatory requirements, no later than the end of the trading day. *See* Nasdaq Rule 4611(d)(5).

Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

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200 Commercial Mail Letters and Cards

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230 First Class Mail

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234 Postage Payment and Documentation

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4.0 Mailing Documentation

4.1 Completing Postage Statements

[Revise 4.1 as follows:]

Any mailing claiming other than single-piece prices and all permit imprint mailings must be accompanied by a postage statement using one of the following approved methods:

a. Electronic, at *PostalOne!* facilities only. Copies of finalized postage statements are available online at the Business Customer Gateway. A change made to any postage statement requires the mailer (agent) to cancel the postage statement online and submit a corrected version.

b. By hard-copy, if the hard-copy postage statements are completed and signed by the mailer (agent). The mailer (agent) may submit a computer-generated facsimile (*see* 4.10, *Facsimile Postage Statements*). A change made to any postage statement requires the mailer (agent) to correct the postage statement accordingly and document the correction. Hard-copy postage statements are processed as follows:

1. At *PostalOne!* facilities—business mail acceptance will enter hardcopy mailing data manually to document the mailing and produce a PS Form 3607–R, Mailing Transaction Receipt. Receipts are available to customers upon request but will not be mailed. Copies of finalized postage statements from *PostalOne!* facilities are available online at the Business Customer Gateway.

2. At non-*PostalOne!* facilities—business mail acceptance will provide a signed and round-dated copy of the postage statement when the copy is provided by the mailer (agent).

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240 Standard Mail

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244 Postage Payment and Documentation

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4.0 Mailing Documentation

4.1 Completing Postage Statements

[Revise 4.1 as follows:]

Any mailing claiming Standard Mail prices must be accompanied by a postage statement using one of the following approved methods:

a. Electronic, at *PostalOne!* facilities only. Copies of finalized postage statements are available online at the Business Customer Gateway. A change made to any postage statement requires the mailer (agent) to cancel the postage statement online and submit a corrected version.

b. By hard-copy, if the hard-copy postage statements are completed and signed by the mailer (agent). The mailer (agent) may submit a computer-generated facsimile (*see* 4.10, *Facsimile Postage Statements*). A change made to any postage statement requires the mailer (agent) to correct the postage statement accordingly and document the correction. Hard-copy postage statements are processed as follows:

1. At *PostalOne!* facilities—business mail acceptance will enter hardcopy mailing data manually to document the mailing and produce a PS Form 3607–R, Mailing Transaction Receipt. Receipts are available to customers upon request but will not be mailed. Copies of finalized postage statements from *PostalOne!* facilities are available online at the Business Customer Gateway.

2. At non-*PostalOne!* facilities—business mail acceptance will provide a signed and round-dated copy of the postage statement when the copy is provided by the mailer (agent).

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300 Commercial Flats

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330 First Class Mail

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334 Postage Payment and Documentation

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4.0 Mailing Documentation

4.1 Completing Postage Statements

[Revise 4.1 as follows:]

Any mailing claiming other than single-piece prices and all permit imprint mailings must be accompanied by a postage statement using one of the following approved methods:

a. Electronic, at *PostalOne!* facilities only. Copies of finalized postage statements are available online at the Business Customer Gateway. A change made to any postage statement requires the mailer (agent) to cancel the postage statement online and submit a corrected version.

b. By hard-copy, if the hard-copy postage statements are completed and signed by the mailer (agent). The mailer (agent) may submit a computer-generated facsimile (*see* 4.10, *Facsimile Postage Statements*). A change made to any postage statement requires the mailer (agent) to correct the postage statement accordingly and document the correction. Hard-copy postage statements are processed as follows:

1. At *PostalOne!* facilities—business mail acceptance will enter hardcopy mailing data manually to document the mailing and produce a PS Form 3607–R, Mailing Transaction Receipt. Receipts are available to customers upon request but will not be mailed. Copies of finalized postage statements from *PostalOne!* facilities are available online at the Business Customer Gateway.

2. At non-*PostalOne!* facilities—business mail acceptance will provide a signed and round-dated copy of the postage statement when the copy is provided by the mailer (agent).

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340 Standard Mail

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344 Postage Payment and Documentation

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4.0 Mailing Documentation

4.1 Completing Postage Statements

[Revise 4.1 as follows:]

Any mailing claiming Standard Mail prices must be accompanied by a postage statement using one of the following approved methods:

a. Electronic, at *PostalOne!* facilities only. Copies of finalized postage statements are available online at the Business Customer Gateway. A change made to any postage statement requires the mailer (agent) to cancel the postage

statement online and submit a corrected version.

b. By hard-copy, if the hard-copy postage statements are completed and signed by the mailer (agent). The mailer (agent) may submit a computer-generated facsimile (*see* 4.10, *Facsimile Postage Statements*). A change made to any postage statement requires the mailer (agent) to correct the postage statement accordingly and document the correction. Hard-copy postage statements are processed as follows:

1. At *PostalOne!* facilities—business mail acceptance will enter hardcopy mailing data manually to document the mailing and produce a PS Form 3607–R, Mailing Transaction Receipt. Receipts are available to customers upon request but will not be mailed. Copies of finalized postage statements from *PostalOne!* facilities are available online at the Business Customer Gateway.

2. At non-*PostalOne!* facilities—business mail acceptance will provide a signed and round-dated copy of the postage statement when the copy is provided by the mailer (agent).

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360 Bound Printed Matter

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364 Postage Payment and Documentation

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2.0 Mailing Documentation

2.1 Completing Postage Statements

[Revise 2.1 as follows:]

All mailings must be paid by permit imprint and must be accompanied by a postage statement using one of the following approved USPS methods:

a. Electronic, at *PostalOne!* facilities only. Copies of finalized postage statements are available online at the Business Customer Gateway. A change made to any postage statement requires the mailer (agent) to cancel the postage statement online and submit a corrected version.

b. By hard-copy, if the hard-copy postage statements are completed and signed by the mailer (agent). The mailer (agent) may submit a computer-generated facsimile (*see* 2.10, *Facsimile Postage Statements*). A change made to any postage statement requires the mailer (agent) to correct the postage statement accordingly and document the correction. Hard-copy postage statements are processed as follows:

1. At *PostalOne!* facilities—business mail acceptance will enter hardcopy mailing data manually to document the mailing and produce a PS Form 3607–R, Mailing Transaction Receipt. Receipts are available to customers upon request but will not be mailed. Copies of finalized postage statements from *PostalOne!* facilities are available online at the Business Customer Gateway.

2. At non-*PostalOne!* facilities—business mail acceptance will provide a signed and round-dated copy of the postage statement when the copy is provided by the mailer (agent).

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370 Media Mail

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374 Postage Payment and Documentation

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2.0 Mailing Documentation

2.1 Completing Postage Statements

[Revise 2.1 as follows:]

Any mailing claiming other than single-piece prices and all permit imprint mailings must be accompanied by a postage statement using one of the following approved methods:

a. Electronic, at *PostalOne!* facilities only. Copies of finalized postage statements are available online at the Business Customer Gateway. A change made to any postage statement requires the mailer (agent) to cancel the postage statement online and submit a corrected version.

b. By hard-copy, if the hard-copy postage statements are completed and signed by the mailer (agent). The mailer (agent) may submit a computer-generated facsimile (*see* 2.7, *Facsimile Postage Statements*). A change made to any postage statement requires the mailer (agent) to correct the postage statement accordingly and document the correction. Hard-copy postage statements are processed as follows:

1. At *PostalOne!* facilities—business mail acceptance will enter hardcopy mailing data manually to document the mailing and produce a PS Form 3607–R, Mailing Transaction Receipt. Receipts are available to customers upon request but will not be mailed. Copies of finalized postage statements from *PostalOne!* facilities are available online at the Business Customer Gateway.

2. At non-*PostalOne!* facilities—business mail acceptance will provide a signed and round-dated copy of the postage statement when the copy is provided by the mailer (agent).

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384 Library Mail

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384 Postage Payment and Documentation

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2.0 Mailing Documentation

2.1 Completing Postage Statements

[Revise 2.1 as follows:]

Any mailing claiming other than single-piece prices and all permit imprint mailings must be accompanied by a postage statement using one of the following approved methods:

a. Electronic, at *PostalOne!* facilities only. Copies of finalized postage statements are available online at the Business Customer Gateway. A change made to any postage statement requires the mailer (agent) to cancel the postage statement online and submit a corrected version.

b. By hard-copy, if the hard-copy postage statements are completed and signed by the mailer (agent). The mailer (agent) may submit a computer-generated facsimile (*see* 2.7, *Facsimile Postage Statements*). A change made to any postage statement requires the mailer (agent) to correct the postage statement accordingly and document the correction. Hard-copy postage statements are processed as follows:

1. At *PostalOne!* facilities—business mail acceptance will enter hardcopy mailing data manually to document the mailing and produce a PS Form 3607–R, Mailing Transaction Receipt. Receipts are available to customers upon request but will not be mailed. Copies of finalized postage statements from *PostalOne!* facilities are available online at the Business Customer Gateway.

2. At non-*PostalOne!* facilities—business mail acceptance will provide a signed and round-dated copy of the postage statement when the copy is provided by the mailer (agent).

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400 Commercial Parcels

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420 Priority Mail

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424 Postage Payment and Documentation

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2.0 Postage Paid With Permit Imprint

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2.3 Postage Statement

[Revise 2.3 as follows:]

Unless manifested using eVS under 705.2.9, any mailing claiming other than single-piece prices and all permit imprint mailings must be accompanied by a postage statement using one of the following approved methods:

a. Electronic, at *PostalOne!* facilities only. Copies of finalized postage statements are available online at the

Business Customer Gateway. A change made to any postage statement requires the mailer (agent) to cancel the postage statement online and submit a corrected version.

b. By hard-copy, if the hard-copy postage statements are completed and signed by the mailer (agent). The mailer (agent) may submit a computer-generated facsimile (*see* 2.4, *Facsimile Postage Statements*). A change made to any postage statement requires the mailer (agent) to correct the postage statement accordingly and document the correction. Hard-copy postage statements are processed as follows:

1. At *PostalOne!* facilities—business mail acceptance will enter hardcopy mailing data manually to document the mailing and produce a PS Form 3607–R, Mailing Transaction Receipt. Receipts are available to customers upon request but will not be mailed. Copies of finalized postage statements from *PostalOne!* facilities are available online at the Business Customer Gateway.

2. At non-*PostalOne!* facilities—business mail acceptance will provide a signed and round-dated copy of the postage statement when the copy is provided by the mailer (agent).

[Add 2.4 as follows:]

2.4 Facsimile Postage Statements

Facsimile postage statements must contain data and elements in locations as close as possible to where they appear on the USPS form. Data fields that do not pertain to information and prices claimed in the mailing and other extraneous information that appears on the USPS form do not have to be included. Facsimiles must include all other information pertaining to the mailing, including the class of mail (or subclass as appropriate), postage payment method (*e.g.,* permit imprint), and four-digit form number (hyphen and suffix optional). All parts, and line numbers within each part, must reflect those on the USPS form. In some cases, this can include fields from multiple USPS forms onto a single facsimile. Most importantly, the facsimile must fully and exactly reproduce the "Certification" and "USPS Use Only" fields that appear on the USPS form. A facsimile postage statement produced by software certified by the USPS Presort Accuracy Validation and Evaluation (PAVE) or Manifest Analysis and Certification (MAC) program is considered a USPS-approved form for these standards. Others may be approved by the entry office postmaster.

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430 First Class Mail

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434 Postage Payment and Documentation

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3.0 Mailing Documentation

3.1 Completing Postage Statements

[Revise 3.1 as follows:]

Unless manifested using eVS under 705.2.9, any mailing claiming other than single-piece prices and all permit imprint mailings must be accompanied by a postage statement using one of the following approved methods:

a. Electronic, at *PostalOne!* facilities only. Copies of finalized postage statements are available online at the Business Customer Gateway. A change made to any postage statement requires the mailer (agent) to cancel the postage statement online and submit a corrected version.

b. By hard-copy, if the hard-copy postage statements are completed and signed by the mailer (agent). The mailer (agent) may submit a computer-generated facsimile (*see* 3.8, *Facsimile Postage Statements*). A change made to any postage statement requires the mailer (agent) to correct the postage statement accordingly and document the correction. Hard-copy postage statements are processed as follows:

1. At *PostalOne!* facilities—business mail acceptance will enter hardcopy mailing data manually to document the mailing and produce a PS Form 3607–R, Mailing Transaction Receipt. Receipts are available to customers upon request but will not be mailed. Copies of finalized postage statements from *PostalOne!* facilities are available online at the Business Customer Gateway.

2. At non-*PostalOne!* facilities—business mail acceptance will provide a signed and round-dated copy of the postage statement when the copy is provided by the mailer (agent).

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440 Standard Mail

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444 Postage Payment and Documentation

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3.0 Mailing Documentation

3.1 Completing Postage Statements

[Revise 3.1 as follows:]

Unless manifested using eVS under 705.2.9, any mailing claiming Standard Mail prices must be accompanied by a postage statement using one of the following approved methods:

a. Electronic, at *PostalOne!* facilities only. Copies of finalized postage statements are available online at the Business Customer Gateway. A change made to any postage statement requires the mailer (agent) to cancel the postage statement online and submit a corrected version.

b. By hard-copy, if the hard-copy postage statements are completed and signed by the mailer (agent). The mailer (agent) may submit a computer-generated facsimile (*see* 3.8, *Facsimile Postage Statements*). A change made to any postage statement requires the mailer (agent) to correct the postage statement accordingly and document the correction. Hard-copy postage statements are processed as follows:

1. At *PostalOne!* facilities—business mail acceptance will enter hardcopy mailing data manually to document the mailing and produce a PS Form 3607–R, Mailing Transaction Receipt. Receipts are available to customers upon request but will not be mailed. Copies of finalized postage statements from *PostalOne!* facilities are available online at the Business Customer Gateway.

2. At non-*PostalOne!* facilities—business mail acceptance will provide a signed and round-dated copy of the postage statement when the copy is provided by the mailer (agent).

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450 Parcel Select

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454 Postage Payment and Documentation

1.0 Basic Standards for Postage Payment

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1.3 Completing Postage Statements

[Revise 1.3 as follows:]

Unless manifested using eVS under 705.2.9, any mailing claiming Parcel Select prices must be accompanied by a postage statement using one of the following approved methods:

a. Electronic, at *PostalOne!* facilities only. Copies of finalized postage statements are available online at the Business Customer Gateway. A change made to any postage statement requires the mailer (agent) to cancel the postage statement online and submit a corrected version.

b. By hard-copy, if the hard-copy postage statements are completed and signed by the mailer (agent). The mailer (agent) may submit a computer-generated facsimile (*see* 1.10, *Facsimile Postage Statements*). A change made to any postage statement requires the mailer (agent) to correct the postage statement accordingly and document the correction. Hard-copy postage statements are processed as follows:

1. At *PostalOne!* facilities—business mail acceptance will enter hardcopy

mailing data manually to document the mailing and produce a PS Form 3607–R, Mailing Transaction Receipt. Receipts are available to customers upon request but will not be mailed. Copies of finalized postage statements from *PostalOne!* facilities are available online at the Business Customer Gateway.

2. At non-*PostalOne!* facilities—business mail acceptance will provide a signed and round-dated copy of the postage statement when the copy is provided by the mailer (agent).

1.4 Documentation

[Revise 1.4 as follows:]

When presented for acceptance, all Parcel Select mailings must be documented as follows:

a. Documentation of postage by entry office and presort level (*e.g.,* by DBMC, OBMC Presort and BMC Presort mail and by 5-digit ZIP Code for DSCF and DDU prices) as required under 705.2.0 through 705.4.0.

b. Except for DSCF, mail palletized under the alternate preparation option that requires separate documentation, other documentation is not required when the correct price is affixed to each piece, or when each piece is of identical weight and the pieces are separated by zone and within each zone are grouped by pieces subject to the same combination of prices.

c. DSCF mail palletized under the alternate preparation option in 705.8.0 must submit the detailed documentation required in 705.8.20.2.

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460 Bound Printed Matter

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464 Postage Payment and Documentation

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2.0 Mailing Documentation

2.1 Completing Postage Statements

[Revise 2.1 as follows:]

Unless manifested using eVS under 705.2.9, all permit imprint mailings must be accompanied by a postage statement using one of the following approved methods:

a. Electronic, at *PostalOne!* facilities only. Copies of finalized postage statements are available online at the Business Customer Gateway. A change made to any postage statement requires the mailer (agent) to cancel the postage statement online and submit a corrected version.

b. By hard-copy, if the hard-copy postage statements are completed and signed by the mailer (agent). The mailer (agent) may submit a computer-generated facsimile (*see* 2.8, *Facsimile Postage Statements*). A change made to any postage statement requires the mailer (agent) to correct the postage statement accordingly and document the correction. Hard-copy postage statements are processed as follows:

1. At *PostalOne!* facilities—business mail acceptance will enter hardcopy mailing data manually to document the mailing and produce a PS Form 3607–R, Mailing Transaction Receipt. Receipts are available to customers upon request but will not be mailed. Copies of finalized postage statements from *PostalOne!* facilities are available online at the Business Customer Gateway.

2. At non-*PostalOne!* facilities—business mail acceptance will provide a signed and round-dated copy of the postage statement when the copy is provided by the mailer (agent).

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470 Media Mail

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474 Postage Payment and Documentation

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2.0 Mailing Documentation

2.1 Completing Postage Statements

[*Revise 2.1 as follows:*]

Unless manifested using eVS under 705.2.9, any mailing claiming other than single-piece prices and all permit imprint mailings must be accompanied by a postage statement using one of the following approved methods:

a. Electronic, at *PostalOne!* facilities only. Copies of finalized postage statements are available online at the Business Customer Gateway. A change made to any postage statement requires the mailer (agent) to cancel the postage statement online and submit a corrected version.

b. By hard-copy, if the hard-copy postage statements are completed and signed by the mailer (agent). The mailer (agent) may submit a computer-generated facsimile (*see* 2.7, *Facsimile Postage Statements*). A change made to any postage statement requires the mailer (agent) to correct the postage statement accordingly and document the correction. Hard-copy postage statements are processed as follows:

1. At *PostalOne!* facilities—business mail acceptance will enter hardcopy mailing data manually to document the mailing and produce a PS Form 3607–R, Mailing Transaction Receipt. Receipts are available to customers upon request but will not be mailed. Copies of finalized postage statements from *PostalOne!* facilities are available online at the Business Customer Gateway.

2. At non-*PostalOne!* facilities—business mail acceptance will provide a signed and round-dated copy of the postage statement when the copy is provided by the mailer (agent).

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480 Library Mail

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484 Postage Payment and Documentation

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2.0 Mailing Documentation

2.1 Completing Postage Statements

[*Revise 2.1 as follows:*]

Unless manifested using eVS under 705.2.9, any mailing claiming other than single-piece prices and all permit imprint mailings must be accompanied by a postage statement using one of the following approved methods:

a. Electronic, at *PostalOne!* facilities only. Copies of finalized postage statements are available online at the Business Customer Gateway. A change made to any postage statement requires the mailer (agent) to cancel the postage statement online and submit a corrected version.

b. By hard-copy, if the hard-copy postage statements are completed and signed by the mailer (agent). The mailer (agent) may submit a computer-generated facsimile (*see* 2.7, *Facsimile Postage Statements*). A change made to any postage statement requires the mailer (agent) to correct the postage statement accordingly and document the correction. Hard-copy postage statements are processed as follows:

1. At *PostalOne!* facilities—business mail acceptance will enter hardcopy mailing data manually to document the mailing and produce a PS Form 3607–R, Mailing Transaction Receipt. Receipts are available to customers upon request but will not be mailed. Copies of finalized postage statements from *PostalOne!* facilities are available online at the Business Customer Gateway.

2. At non-*PostalOne!* facilities—business mail acceptance will provide a signed and round-dated copy of the postage statement when the copy is provided by the mailer (agent).

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2010–1499 Filed 1–25–10; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–ORA–2008–0307; FRL–8968–4]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Montana on November 1, 2006 and November 20, 2007. The revisions are to the Administrative Rules of Montana. Revisions include minor editorial and grammatical changes, updates to the citations and references to federal and state laws and regulations, other minor changes to conform to federal regulations, and updates to links to sources of information. This action is being taken under section 110 of the Clean Air Act.

DATES: Written comments must be received on or before February 25, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–ORA–2008–0307, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: dolan.kathy@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instruction on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 303–312–6142, *dolan.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revisions as a direct final rule without prior proposal because the Agency views these as noncontroversial SIP revisions and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register**.

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

Dated: September 25, 2009.

Andrew M. Gaydosh,

Acting Regional Administrator, Region 8.

[FR Doc. 2010–1398 Filed 1–25–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–74; MB Docket No. 10–22; RM–11591]

FM TABLE OF ALLOTMENTS, DEBEQUE, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division seeks comments on a petition filed by Cochise Media Licenses, LLC, proposing the substitution of Channel 247C3 for vacant Channel 275C3 at DeBeque, Colorado. The proposed channel substitution is intended to accommodate the hybrid application, proposing the reallotment of Channel 274C3, Crawford, Colorado, to Channel 275C3 at Battlement Mesa, Colorado, as its first local service. Channel 247C3 can be allotted to DeBeque consistent with the minimum distance separation requirements of the Rules with a site restriction 13.8 kilometers (8.5 miles) northeast of the community. The reference coordinates are 39–24–45 NL and 108–05–26 WL.

DATES: Comments must be filed on or before March 8, 2010, and reply comments on or before March 23, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. In addition to filing comments with the FCC interested parties should serve the petitioner, as follows: Ann Goodwin Crump, Esq., c/o Cochise Broadcasting, LLC, Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17th Street – Eleventh Floor, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 10–22, adopted January 13, 2010 and released January 15, 2010. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, http://www.bcpiweb.com.

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

Provisions of the Regulatory Flexibility Act of 1980 does not apply to this proceeding.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comment may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's

eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1988).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov. For submitting comments, filers should follow the instructions provided on the website.

For ECFS filer, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filer must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e–mail. To get filing instructions, filers should send an e–mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

For Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rule making number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first–class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand–delivered or messenger–delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelope must be disposed of before entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first–class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e–mail to fcc504@fcc.gov or call the Consumer & Government Affairs Bureau at 202–418–0530 (voice) , 202–418–0432 (tty).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73 – RADIO BRAODCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 275C3 and by adding Channel 247C3 at DeBeque.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2010–1426 Filed 1–25–10; 8:45 am]

BILLING CODE 6712–07–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 10–38; MB Docket No. 09–219; RM–11581]

FM TABLE OF ALLOTMENTS, BRACKETTVILLE, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division seeks comments on a petition for rulemaking filed by RF Services, Inc., proposing the deletion of vacant Channel 234A at Brackettville, Texas. The proposed deletion of this vacant allotment accommodates the new FM station application, which requests the substitution of Channel 234C3 for Channel 235C3 at Rocksprings, Texas, reallotment of Channel 234C3 at Rocksprings, to Brackettville, Texas, modification of the new FM station authorization. See File No. BNPH–20091019AFF. The reference coordinates for vacant Channel 234A are 29–19–00 NL and 100–25–03 WL.

DATES: Comments must be filed on or before March 8, 2010, and reply comments on or before March 23, 2010.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. In addition to filing comments with the FCC interested parties should serve the petitioner, as follows: Greg Shaipro, Treasurer, RF Services, Inc., 7301 Ranch Road 620 North, Suite 155 Bldg. 279, Austin, Texas 78726.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 09–219, adopted January 13, 2010, and released January 15, 2010. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20554, 800–378–3160 or via the company's website, http://www.bcpiweb.com.

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

Provisions of the Regulatory Flexibility Act of 1980 does not apply to this proceeding.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comment may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1988).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov. For submitting

comments, filers should follow the instructions provided on the website.

For ECFS filer, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filer must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e–mail. To get filing instructions, filers should send an e–mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

For Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rule making number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first–class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand–delivered or messenger–delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelope must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first–class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e–mail to fcc504@fcc.gov or call the Consumer & Government Affairs Bureau at 202–418–0530 (voice) , 202–418–0432 (tty).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73 – RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Brackettville, Channel 234A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2010–1427 Filed 1–25–10; 8:45 am]

BILLING CODE 6712–01–S

Notices

Federal Register
Vol. 75, No. 16
Tuesday, January 26, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting, Posting, and Deposting of Stockyards

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is taking several actions to post and depost stockyards under the Packers and Stockyards Act (P&S Act). Specifically, we are proposing that eight stockyards now operating subject to the P&S Act be posted. We are posting 20 stockyards that were identified previously as operating subject to the P&S Act. Finally, we are deposting 34 stockyards that can no longer be used as stockyards.

DATES: For the proposed posting of stockyards, we will consider comments that we receive by February 10, 2010.

For the deposted stockyards, the deposting is effective on January 26, 2010.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *E–Mail: comments.gipsa@usda.gov.*
- *Mail:* H. Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1654–S, Washington, DC 20250–3604.
- *Fax:* (202) 690–2173.
- *Hand Delivery or Courier:* H. Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- *Internet:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Director, Policy and Litigation Division, e-mail: *S.Brett.Offutt@usda.gov* or fax: (202) 690–3207.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the P&S Act, (7 U.S.C. 181 *et seq.*). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Section 302 of the P&S Act (7 U.S.C. 202) defines the term "stockyard" as follows: "* * * any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other enclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce."

Section 302 (b) of the P&S Act requires the Secretary of Agriculture to determine which stockyards meet this definition, and to notify the owner of the stockyard and the public of that determination by posting a notice in each designated stockyard. Once the Secretary provides notice to the stockyard owner and the public, the stockyard is subject to the provisions of Title III of the P&S Act (7 U.S.C. 201–203 and 205–217a) until the Secretary deposts the stockyard by public notice. To post a stockyard, we assign the stockyard a facility number, notify the stockyard owner, and send an official posting notice to the stockyard owner to display in a public area of the stockyard. This process is referred to as "posting." The date of posting is the date that the posting notices are physically displayed at the stockyard. A facility that does not meet the definition of a stockyard is not subject to the P&S Act, and therefore cannot be posted. A posted stockyard can be deposted, which occurs when the facility is no longer used as a stockyard.

We are hereby notifying stockyard owners and the public that the following eight stockyards meet the definition of a stockyard, and that we propose to designate these stockyards as posted stockyards.

Proposed facility No.	Stockyard name and location
CA–193	Westside Auction Yard, Newman, California.
AZ–117	Robertson Horse Sales, Benson, Arizona.
IA–263	Clarke's Auctioneering, Chariton, Iowa.
KY–185	Bluegrass Sales Stables, LLC, Elkton, Kentucky.
ME–106	Clark's Auction Company, Skowhegan, Maine.
OK–216	Alva Livestock Market, Alva Oklahoma.
TX–356	Corsicana Livestock Auction, Inc., Corsicana, Texas.
WI–151	Turenne Livestock Market, Thorpe, Wisconsin.

We are also notifying the public that the stockyards listed in the following table meet the P& S Act's definition of a stockyard and that we have posted the stockyards. On April 20, 2009, we published a notice in the **Federal Register** (74 FR 17945–17947) of our proposal to post these 20 stockyards. Since we received no comments to our proposal, we assigned the stockyards a facility number and notified the owner of the stockyard facilities. Posting notices were sent to the owner of the stockyard to display in public areas of the stockyard. The table below reflects the date of posting for each stockyard.

Facility No.	Stockyard name and location	Date of posting
AL–197	Screamer 5L Auction, Abberville, Alabama	June 1, 2009.
KS–209	Lyon County Livestock Sales & Services, LLC, dba Admire Livestock Auction, Admire, Kansas.	June 3, 2009.
KY–182	Cattlemen's Livestock Market, LLC, Rockfield, Kentucky	June 2, 2009.
KY–183	Mill's 31–E Auction Center, Scottsville, Kentucky	June 10, 2009.
KY–184	Blue Grass South Livestock Market, LLC, Stanford, Kentucky	
MI–151	Tom Moore Sales, Onsted, Michigan	May 30, 2009.

Facility No.	Stockyard name and location	Date of posting
MI–152	United Producers, Inc., St. Louis, Michigan	June 1, 2009.
MI–153	United Producers, Inc., Manchester, Michigan	June 2, 2009.
MI–154	United Producers, Inc., Cass City, Michigan	June 2, 2009.
NC–179	Edward Johnson Auctioneers, Inc., dba Johnson's Cattle Auction, Canton, North Carolina.	June 6, 2009.
NM–124	Cow House Auction, Kirtland, New Mexico	June 10, 2009.
OH–153	Larue Horse Sale, LLC, LaRue, Ohio	May 29, 2009.
OK–215	Old Goat Enterprises, LLC, dba Countryside Auction, Chandler, Oklahoma	June 9, 2009.
TN–200	Longhorn Auction Company and Livestock Sales, Mountain City, Tennessee	June 10, 2009.
TN–201	James Linville, dba Scotts Hill Stockyard, Scotts Hill, Tennessee	June 1, 2009.
TN–202	Tennessee Livestock Producers, Inc., Columbia, Tennessee	June 10, 2009.
TX–352	Texas Cattle Exchange, Inc., Eastland, Texas	June 1, 2009.
TX–353	Elkhart Horse Center, Elkhart, Texas	June 5, 2009.
TX–354	Marion County Stockyards, Jefferson, Texas	June 10, 2009.
VA–164	Victoria Livestock Market, Victoria, Virginia	June 10, 2009.

Finally, we are notifying the public that the following 34 stockyards no longer meet the definition of a stockyard and that they are being deposted. We depost stockyards when the facility can no longer be used as a stockyard. The reasons a facility can no longer be used as a stockyard may include the following: (1) The market agency has moved and the posted facility is abandoned; (2) the facility has been torn down or otherwise destroyed, such as by fire; (3) the facility is dilapidated beyond repair; or (4) the facility has been converted and its function has changed.

Facility No.	Stockyard name and location	Date posted
AR–103	Batesville Stockyards, Inc., Batesville, Arkansas	June 28, 1957.
AR–177	Morrilton Horse Sale, Morrilton, Arkansas	April 17, 2006.
CO–148	Valley Livestock Auction Co., Inc., Fruita, Colorado	June 1, 1978.
CO–152	Mountain States Livestock Marketing, Inc., Silt, Colorado	February 25, 1986.
FL–100	Arcadia State Livestock Market, Inc.	February 26, 1960.
FL–102	Neel Cattle, Inc.	March 7, 1960.
FL–112	Northwest Florida Livestock Market, Inc.	March 1, 1960.
FL–120	Cattlemen's Livestock Auction Market	February 25, 1960.
KS–105	Beloit Livestock Auction, Beloit, Kansas	March 29, 1950.
KS–106	Coffey County Livestock Market, Inc., Burlington, Kansas	June 16, 1959.
KS–109	Chanute Regional Stockyards, Inc., Chanute, Kansas	May 26, 1959.
KS–144	Hoxie Livestock Market, Hoxie, Kansas	March 22, 1965.
LA–111	Livestock Producers, Inc., Bossier City, Louisiana	January 20, 1959.
LA–118	Livestock Producers, Inc., Homer, Louisiana	March 9, 1957.
LA–145	Stanley Brothers Livestock, Inc., Bastrop, Louisiana	August 22, 1994.
MO–196	United Producers, Inc., Sedalia, Missouri	June 8, 1959.
MO–242	United Producers, Inc., Buffalo, Missouri	December 15, 1977.
NM–103	Twin Heart Ranch, Inc., dba San Juan Livestock, Aztec, New Mexico.	March 28, 1966.
OK–135	Hennessey Livestock Auction, LLC, Hennessey, Oklahoma	March 25, 1969.
OR–123	Bever Livestock Auction, Bever, Oregon	September 20, 1960.
PA–106	Chambersburg Livestock Sales, Inc., Chambersburg, Pennsylvania.	December 3, 1959.
PA–125	Lancaster Stockyards, Inc., Lancaster, Pennsylvania	November 1, 1921.
PA–137	Quakertown Livestock Sales, Inc., Quakertown, Pennsylvania	November 18, 1959.
PA–140	Isennock Auction Services, Inc., New Park, Pennsylvania	October 14, 1964.
PA–146	Thomasville Livestock Market, Inc., York, Pennsylvania	December 2, 1959.
PA–150	Sarah E. Fisher's Sale, York Springs, Pennsylvania	November 21, 1975.
PA–153	Green Acres Enterprise, Inc., Rossiter, Pennsylvania	March 29, 1986.
TN–110	Southern Livestock & Auction Company, Columbia, Tennessee	August 30, 1961.
TN–152	Paris Livestock Sales, Paris, Tennessee	May 26, 1959.
TX–114	Belton Livestock Auction, Belton, Texas	September 10, 1963.
TX–116	Blanco Livestock Commission Company, Blanco, Texas	August 18, 1961.
TX–157	Eastland Auction Co., Eastland, Texas	November 30, 1956.
TX–242	Paris Livestock Commission Company, Inc., Paris, Texas	November 20, 1956.
TX–253	Union Stock Yards, San Antonio, Texas	November 1, 1921.

Effective Date

These depostings are effective upon publication in the **Federal Register** because they relieve a restriction and, therefore, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure.

Authority: 7 U.S.C. 202.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2010–1498 Filed 1–25–10; 8:45 am]

BILLING CODE 3410–KD–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: U.S. Census Bureau.

Title: 2008 Panel of the Survey of Income & Program Participation, Wave 6 Topical Modules.

OMB Control Number: 0607–0944.

Form Number(s): SIPP–28605(L) Director's Letter; SIPP/CAPI Automated Instrument; SIPP28003 Reminder Card.

Type of Request: Revision of a currently approved collection.

Burden Hours: 143,303.

Number of Respondents: 94,500.

Average Hours Per Response: 30 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 6 interview for the 2008 Panel of the Survey of Income and Program Participation (SIPP). The core SIPP and reinterview instruments were cleared under Authorization No. 0607–0944.

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time.

The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs, such as estimating eligibility for government programs, examining pension and health care coverage, and analyzing individual net worth. These supplemental questions are included with the core and are referred to as "topical modules."

The topical modules for the 2008 Panel Wave 6 are as follows: Child Support Agreements, Support for Non-Household Members, Functional Limitations and Disability (Adults and Children), Employer Provided Health Benefits, and Adult Well Being (Attachment A). These topical modules were previously conducted in the SIPP 2004 Panel Wave 5 instrument. Wave 6 interviews will be conducted from May 1, 2010 to August 31, 2010.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having durations of approximately 3 to 4 years. The 2008 Panel is scheduled for four years and four months and includes thirteen waves which began September 1, 2008. All household members 15 years old or over are interviewed using regular proxy-respondent rules. They are interviewed a total of thirteen times (thirteen waves), at 4-month intervals, making the SIPP a longitudinal survey. Sample people (all household members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit (PSU) will be followed and interviewed at their new address. Individuals 15 years old or over who enter the household after Wave 1 will be interviewed; however, if these people move, they are not followed unless they happen to move along with a Wave 1 sample individual.

The OMB has established an Interagency Advisory Committee to provide guidance for the content and procedures for the SIPP. Interagency subcommittees were set up to recommend specific areas of inquiries for supplemental questions.

The Census Bureau developed the 2008 Panel Wave 6 topical modules through consultation with the SIPP OMB Interagency Subcommittee. The questions for the topical modules address major policy and program concerns as stated by this subcommittee and the SIPP Interagency Advisory Committee.

Data provided by the SIPP are being used by economic policymakers, the Congress, state and local governments, and federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–1383 Filed 1–25–10; 8:45 am]

BILLING CODE 3510–07–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: U.S. Census Bureau.

Title: Manufacturers' Unfilled Orders Survey.

OMB Control Number: 0607–0561.

Form Number(s): MA–3000, MA–3000(I), MA3000–L1, MA–3000–L2.

Type of Request: Reinstatement, with change of an expired collection.

Burden Hours: 3,000.

Number of Respondents: 6,000.

Average Hours per Response: 30 minutes.

Needs and Uses: The Manufacturers' Shipments, Inventories, and Orders (M3) survey collects monthly data on shipments, inventories, new orders, and unfilled orders from manufacturing companies. The orders and shipments data are used widely and are valuable tools for analysts of business cycle conditions, including members of the Council of Economic Advisers, Bureau of Economic Analysis, Federal Reserve Board, Department of the Treasury, and the business community.

New orders serve as an indicator of future production commitments; the data are direct inputs into the leading economic indicator series. New orders, as reported in the monthly survey, are derived by adding shipments to the net change in the unfilled orders from the

previous month. The ratio of unfilled orders to shipments is an important indicator of pressure on manufacturing capacity.

The monthly M3 estimates are based on a relatively small panel of domestic manufacturers and reflect primarily the month-to-month changes of large companies. There is a clear need for periodic benchmarking of the M3 estimates to reflect the entire manufacturing universe. The Annual Survey of Manufactures (ASM) provides annual benchmarks for the shipments and inventories but because the data are collected at the establishment level rather than the corporate level on the ASM and most companies retain records on unfilled orders at the corporate level, data collection of unfilled orders proved to be unsuccessful. In order to collect the appropriate and relevant data, the M3 discontinued the practice of collecting the data from the ASM, necessitating a separate survey for unfilled orders beginning in 1976. Over the life of the M3 Survey, there have been four surveys specifically designed to collect unfilled orders. These surveys were conducted in 1976, 1986, 2000, and 2008. After analyzing the results of the 2008 survey, the Census Bureau determined the need for an annual data collection of unfilled orders data. The U.S. Census Bureau plans a reinstatement with a change to an expired collection "Manufacturers' Shipments, Inventories, and Orders (M3) Supplement: 2006–2007 Unfilled Orders Benchmark Survey," to be renamed the "Manufacturers' Unfilled Orders Survey."

The Manufacturers' Unfilled Orders Survey will be used as a benchmark for the M3 Survey each year. The Census Bureau will use these data to develop universe estimates of unfilled orders as of the end of the calendar year and adjust the monthly M3 data on unfilled orders to these levels on the NAICS basis. The benchmarked unfilled orders levels will then be used to derive estimates of new orders received by manufacturers. The survey data will also be used to determine whether it is necessary to collect unfilled orders data for specific industries on a monthly basis; some industries are not asked to provide unfilled orders data on the M3 Survey.

The Census Bureau will use the information provided by this survey to develop universe estimates of unfilled orders as of the end of each year, and then adjust the monthly M3 data on unfilled orders to these levels. The benchmarked unfilled orders levels will be used to derive estimates of new orders received by manufacturers.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 131, 182, 193, and 224.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: January 20, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–1399 Filed 1–25–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Survey of Public Perceptions and Attitudes About Hawaiian Monk Seals

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 29, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 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 Jen Metz, (808) 944–2268 or *Jennifer.Metz@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this information-gathering activity is to gain a better understanding of public knowledge, attitudes, beliefs, values, and behaviors regarding the endangered Hawaiian monk seal. The information gained will be used to develop management strategies and an outreach and education plan intended to reduce human-seal interactions. Members of the public targeted for this survey will include people likely to encounter Hawaiian monk seals in the wild, including but not limited to: fishers, surfers, beach goers, divers, operators and patrons of commercial water sports tours, and hotel managers operating in areas of high monk seal activity. The information gathered by this survey, and the management and education and outreach efforts it supports, will be increasingly useful for Hawaiian monk seal conservation as seals are expected to become more numerous around the populated Hawaiian Islands over the next several years. The Hawaiian monk seal is listed as endangered under the Endangered Species Act and is also protected under the Marine Mammal Protection Act and Hawaii State law.

II. Method of Collection

Participants voluntarily complete paper questionnaires. Questionnaires will be distributed in-person and by mail. Methods of submittal include direct on-site return to those conducting the survey, and mail/fax/e-mail.

III. Data

OMB Control Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals and households; business and for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 167.

Estimated Total Annual Cost to Public: $0.

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: January 21, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–1449 Filed 1–25–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Correction: Proposed Information Collection; Comment Request; Fisheries Certificate of Origin

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Correction.

SUMMARY: On January 15, 2010, a notice was published in the **Federal Register** (75 FR 2482) on the proposed information collection, Fisheries Certificate of Origin.

In the third paragraph under **SUPPLEMENTARY INFORMATION**, III. Data, the OMB Control No. is *corrected to read,* "0648–0335."

All other information in the notice is correct and remains unchanged.

Dated: January 21, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–1448 Filed 1–25–10; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Number 100115026–0026–01]

Science Advisory Board; Draft Report of the NOAA Science Advisory Board Oceans and Health Working Group

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability and request for public comment.

SUMMARY: NOAA Research (OAR) publishes this notice on behalf of the NOAA Science Advisory Board (SAB) to announce the availability of the draft report of the SAB Oceans and Health Working Group (here called the OHWG) for public comment. The draft report of the OHWG has been prepared pursuant to the request initiated from NOAA for an external panel of experts to explore opportunities to enhance NOAA's ongoing ocean health efforts and their impacts on ecosystem and public health and well-being.

DATES: Comments on this draft report must be received by 5 p.m. on February 25, 2010.

ADDRESSES: The Draft Report of the OHWG will be available on the NOAA Science Advisory Board Web site at *http://www.sab.noaa.gov/Reports/ohwg.*

The public is encouraged to submit comments electronically to *noaa.sab.comments@noaa.gov.* For individuals who do not have access to the Internet, comments may be submitted in writing to: NOAA Science Advisory Board (SAB) c/o Dr. Cynthia Decker, 1315 East-West Highway-R/SAB, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, 1315 East-West Highway-R/SAB, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–734–1459) during normal business hours of 9 a.m. to 5 p.m. Eastern Time, Monday through Friday, or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

SUPPLEMENTARY INFORMATION: As part of its charge, the OHWG was tasked to consider the following questions and any others that the Working Group may decide to entertain:

(1) What are NOAA's unique and important scientific roles in addressing ocean health issues?

(2) What are the right ocean health science questions, products and services for NOAA?

(3) Are there additional ocean health science issues that should be included in the NOAA research portfolio? If so, what are these?

(4) What are the appropriate steps for NOAA to incorporate and advance ocean health as part of its core mission?

(5) How could NOAA more systematically develop ocean health products and services to enhance ecosystem, organism, human, and community health?

(6) How can NOAA better integrate among its major programs, including activities conducted within the agency and those supported in the external community, to better define and assess ocean health issues?

The complete terms of reference for the working group can be found at: *http://www.sab.noaa.gov/Working_Groups/current/oceans_health/OCEANSHEALTH_TOR_FINAL.pdf.*

The SAB is chartered under the Federal Advisory Committee Act and is the only Federal Advisory Committee with the responsibility to advise the Under Secretary on long- and short-term strategies for research, education, and application of science to resource management and environmental assessment and prediction.

NOAA welcomes all comments on the content of the draft report. We also request comments on any inconsistencies perceived within the report, and possible omissions of important topics or issues. This draft report is being issued for comment only and is not intended for interim use. For any shortcoming noted within the report, please propose specific remedies. Suggested changes will be incorporated where appropriate, and a final report will be posted on the SAB Web site.

Please follow these instructions for preparing and submitting comments. Using the format guidance described below will facilitate the processing of comments and assure that all comments are appropriately considered. Overview comments should be provided first and should be numbered. Comments that are specific to particular pages, paragraphs or lines of the section should follow any overview comments and should identify the page and line numbers to which they apply. Please number each page of your comments.

Dated: January 20, 2010.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–1417 Filed 1–25–10; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT92

Endangered Species; File No. 14396

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

Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given the Delaware Department of Natural Resources and Environmental Control-Division of Fish and Wildlife, Dover, DE, has been issued a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

- Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and
- Northeast Region, NMFS, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9300; fax (978) 281–9333.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Kate Swails, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On August 25, 2009, notice was published in the **Federal Register** (74 FR 42861) that a request for a scientific research permit to take shortnose sturgeon had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant is authorized to conduct a five-year scientific study of shortnose sturgeon in the Delaware River where primary study objectives are to locate and document nursery areas, individual movement patterns, seasonal movements, home ranges, and habitats of juvenile shortnose sturgeon using telemetry. The project will be coordinated with an ongoing Atlantic sturgeon (*Acipenser oxyrinchus oxyrhinchus*) study having similar research objectives. Annually, up to 100 shortnose sturgeon will be weighed, measured, examined for tags, marked with Passive Integrated Transponder (PIT) tags and Floy tags, photographed and released. Additionally, a subset of up to 15 juvenile shortnose sturgeon will be anesthetized and implanted with acoustic transmitters. One unintentional mortality is authorized over the five year term of the project where sampling is scheduled from March 1 to December 15 each year.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: January 19, 2010.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–1493 Filed 1–25–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–825]

Stainless Steel Bar From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1757.

SUPPLEMENTARY INFORMATION:

Background

At the request of interested parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain stainless steel bar from Brazil for the period February 1, 2008, through January 31, 2009. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 12310 (March 24, 2009). On October 29, 2009, we extended the time period for issuing the preliminary results of the review by 90 days until January 29, 2010. See *Stainless Steel Bar From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 55812 (October 29, 2009).

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month of the order. See also 19 CFR 351.213(h).

We determine that it is not practicable to complete the preliminary results of this review by the current deadline of January 29, 2010, for several reasons. Specifically, the Department has granted the respondent, Villares Metals S.A. (Villares), several extensions to respond to the original and supplemental questionnaires. Thus, the Department needs additional time to review and analyze the responses submitted by Villares. Further, the Department requires additional time to review issues such as corporate affiliations and steel grades of products reported by Villares as they will affect the Department's matching methodology in this case. Finally, in response to the petitioners' cost allegation submitted on September 9, 2009, we initiated a cost investigation on October 28, 2009, and received Villares's cost information on November 23, 2009. As a result, the Department requires additional time not only to review and analyze Villares's cost information but also collect additional cost information. Therefore, we are extending the time period for issuing the preliminary results of this review by 30 days until March 1, 2010.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act and 19 CFR 351.213(h)(2).

Dated: January 19, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–1513 Filed 1–25–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Polyester Staple Fiber From Taiwan: Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from Far Eastern New Century Corporation, the Department of Commerce is initiating a changed-circumstances review of the antidumping duty order on polyester staple fiber from Taiwan. We have preliminarily concluded that Far Eastern New Century Corporation is the successor-in-interest to Far Eastern Textile Limited and, as a result, should be accorded the same treatment previously accorded to Far Eastern Textile Limited with regard to the antidumping duty order on polyester staple fiber from Taiwan. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* January 26, 2010.

FOR FURTHER INFORMATION CONTACT: Michael A. Romani or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0198, or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2000, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order on polyester staple fiber from Taiwan. See *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan,* 65 FR 33807 (May 25, 2000) (*Antidumping Order*). One of the companies subject to the investigation was Far Eastern Textile Limited (FET).[1]

FET has participated in several administrative reviews of the *Antidumping Order.* On December 4, 2009, FET notified the Department that on October 13, 2009, it had legally changed its name to Far Eastern New Century Corporation (FENC). At that time FET requested that the Department conduct a changed-circumstances review to determine whether FENC is the successor-in-interest to FET.

Scope of the Order

The product covered by the order is certain polyester staple fiber (PSF). PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to the order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 5503.20.00.20 is specifically excluded from the order. Also specifically excluded from the order are PSF of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low-melt PSF is excluded from the order. Low-melt PSF is defined as a bi-component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to the order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Initiation of Changed-Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216, the Department will conduct a changed-circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by FENC claiming that FENC is the successor-in-interest to FET demonstrates changed circumstances sufficient to warrant such a review. See 19 CFR 351.216(d). Therefore, we are initiating a changed-circumstances review.

Analysis of Changed Circumstances

In determining whether one company is the successor to another for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in management, production facilities, supplier relationships, and customer base. See *Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan,* 67 FR 58 (January 2, 2002) (*Japan Rubber*), citing *Brass Sheet and Strip From Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992) (*Canada Brass*). Although no single or even several of these factors will necessarily provide a dispositive indication of succession, generally the Department will consider one company to be a successor to another company if its resulting operation is similar to that of its predecessor. See, *e.g., Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Changed Circumstances Review,* 59 FR 6944 (February 14, 1994); see also *Canada Brass,* 57 FR at 20460. Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, the Department will assign the new company the cash-deposit rate of its predecessor. See *Japan Rubber,* 67 FR at 59; see also *Circular Welded Non-Alloy Steel Pipe From Korea; Final Results of Antidumping Duty Changed Circumstances Review,* 63 FR 20572 (April 27, 1998) (finding successorship where the company only changed its name and did not change its operations).

In its December 4, 2009, submission, FENC provided the following information to demonstrate that it is the successor-in-interest to FET: (1) A press release dated October 13, 2009, announcing the name change; (2) two disclosures to the Taiwan Stock Exchange dated October 13, 2009, and October 20, 2009, announcing the name change and government approval thereof; (3) a certificate issued from the Bureau of Foreign Trade, Ministry of Economic Affairs, that states that the new English (and Chinese) names have been registered with the Bureau; (4) a letter from the Ministry of Economic Affairs approving the name change and amendment of Articles of Incorporation; (5) a letter from the Ministry of Economic Affairs approving FET's application to register the issuance of new shares (under the old name). See FENC's December 4, 2009, submission at Exhibits 1–5.

FENC's December 4, 2009, submission states that the only change is the name and that there have been no changes regarding FET's organization, ownership, management, production facilities, supplier relationships and customer base. See FENC's December 4, 2009, submission at 1–2. The press release at Exhibit 1 of FENC's December 4, 2009, submission shows that the company publicly announced the fact that its shareholders had voted to

[1] Although the Department referred to FET as Far Eastern Corporation in the *Antidumping Order* and in a subsequent sunset review, in all other segments of the proceeding the Department has referred to FET as Far Eastern Textile Limited. *See, e.g., Certain Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review,* 74 FR 18348 (April 22, 2009).

rename the company at a shareholder's meeting held on October 13, 2009. Operational changes mentioned in this announcement signaled that FENC would not only continue production but would expand and modernize operations for the production of subject merchandise. This conclusion is supported by the following three statements made by Chairman Hsu regarding his intentions toward the PSF industry: (1) "to accelerate growth through internal expansions, technology innovations, as well as mergers and acquisitions;" (2) "to scale up its production of recyclable and/or bio-degradable products" including "recycled chips and recycled fibers," two inputs used in the production of PSF; 3) the dedication of staff "to the upgrade of facilities in order to reduce the energy consumed in the production process." See FENC's December 4, 2009, submission at Exhibit 1, at 1. These statements made in its press release support the contention that FENC operates as FET did. FENC's announced plans for expansion of production and investment in modernizing plant and equipment indicates that the company does not plan to divest itself of its current production facilities.

Exhibit 2 of FENC's December 4, 2009, submission demonstrates FENC's disclosure of its name change and the government's approval thereof to the Taiwanese Stock Exchange on October 13, 2009, and October 20, 2009, respectively. Exhibit 3 of FENC's December 4, 2009, submission demonstrates certification of FENC's Chinese and English language name changes by the Taiwanese Bureau of Foreign Trade, Ministry of Economic Affairs, in a certification letter dated October 28, 2009.

Exhibit 4 of FENC's December 4, 2009, submission demonstrates that the government of Taiwan approved the name change and related changes to FET/FENC's Articles of Incorporation. In this exhibit, FENC submitted an approved request for the application for name change containing a "Company Limited by Shares—Change Registration Form" dated October 15, 2009. Taiwan's Ministry of Economic Affairs approved the name change and amendments to FENC's Articles of Incorporation on October 19, 2009 (reference number 09801241180). See FENC's December 4, 2009, submission at Exhibit 4, at 8. Exhibit 5 demonstrates that the government of Taiwan registered the issuance of new shares of stock while the company was still named FET on September 16, 2009. Both exhibits include "Company Limited by Shares—Change Registration Forms" and these forms from before and after the name change include identical unified business numbers, addresses, legal representatives, capital, directors, managers, officers, and business scope. See FENC's December 4, 2009, submission at Exhibit 4, at 9–14; see also FENC's December 4, 2009, submission at Exhibit 5, at 9–14. According to FENC's December 4, 2009, submission, the legal status of companies incorporated in Taiwan is substantiated by the "Company Limited by Shares—Change Registration Form" issued by the Ministry of Economic Affairs. See FENC's December 4, 2009, submission at 2.

Preliminary Results of the Review

When it concludes that expedited action is warranted, the Department may publish the notice of initiation and preliminary results for a changed-circumstances review concurrently. See 19 CFR 351.221(c)(3)(ii). See also *Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Canned Pineapple Fruit From Thailand,* 69 FR 30878 (June 1, 2004). Based on the information on the record, we have determined that expedition of this changed-circumstances review is warranted. In this case, based on the analysis discussed above, we preliminarily find that FENC is the successor-in-interest to FET and, as such, is entitled to FET's cash-deposit rate with respect to entries of subject merchandise.

Public Comment

Any interested party may request a hearing within 14 days of publication of this notice. See 19 CFR 351.310(c). Any hearing, if requested, will be held 28 days after the date of publication of this notice or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 14 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 21 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this changed-circumstances review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included. Consistent with 19 CFR 351.216(e), we will issue the final results of this changed-circumstances review no later than 270 days after the date on which this review was initiated or within 45 days of publication of these preliminary results if all parties agree to our preliminary finding.

We are issuing and publishing this notice of initiation and preliminary results in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216 and 351.221(c)(3).

Dated: January 19, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–1512 Filed 1–25–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT82

Marine Mammals; File No. 14676

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Paul Ponganis, Ph.D., University of California at San Diego, La Jolla, CA, 92093 has been issued a permit to conduct research on California sea lions (*Zalophus californianus*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

- Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and
- Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Tammy Adams, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On October 15, 2009, notice was published in the **Federal Register** (74 FR 52949) that a request for a permit to conduct research had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The purpose of this research is to determine the role of blood oxygen store depletion in the dive behavior and

foraging ecology of California sea lions. This research will help determine the ability of these animals to adapt to environmental change. Over the course of five years, up to twenty animals will be captured, flipper tagged, anesthetized, and equipped with a backpack blood oxygen recorder during foraging trips to sea. Animals will be recaptured after the foraging trip to remove the recorders. Research will occur on San Nicolas Island off the coast of California. Annually, up to 6,000 California sea lions, 500 harbor seals (*Phoca vitulina*), 1,000 northern elephant seals (*Mirounga angustirostris*), and 150 northern fur seals (*Callorhinus ursinus*) may be incidentally harassed during research. The permit is valid until February 1, 2015.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: January 20, 2010.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–1494 Filed 1–25–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on February 11, 2010, 10 a.m., Herbert C. Hoover Building, Room 6087B, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Open Session

1. Opening Remarks and Introduction.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentation on Composite Technology.
4. Report of Composite Working group and ECCN review subgroup.
5. New business.

Closed Session

6. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yspringer@bis.doc.gov* no later than February 4, 2010.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via e-mail.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 18, 2009, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the premature disclosure of which would likely frustrate the implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: January 19, 2010.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2010–1347 Filed 1–25–10; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AW91

Taking and Importing Marine Mammals; U.S. Navy Training in the Southern California Range Complex

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a letter of authorization (LOA) to the U.S. Navy (Navy) to take marine mammals incidental to Navy training, maintenance, and research, development, testing, and evaluation (RDT&E) activities to be conducted within the Southern California (SOCAL) Range Complex, which extends south and southwest off the southern California coast, for the period of January 22, 2010, through January 21, 2011.

DATES: This Authorization is effective from January 22, 2010, through January 21, 2011.

ADDRESSES: The LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301)713–2289, ext. 166.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Regulations governing the taking of marine mammals by the Navy incidental to training, maintenance, and RDT&E in the SOCAL Range Complex became effective on January 14, 2009 (74 FR 3881, January 21, 2009), and remain in effect through January 13, 2014. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements and establish a framework to authorize incidental take through the issuance of LOAs.

Summary of Request

On November 3, 2009, NMFS received a request from the Navy for a renewal of an LOA issued on January 22, 2009, for the taking of marine mammals incidental to training and research activities conducted within the SOCAL Range Complex under regulations issued on January 14, 2009 (74 FR 3881, January 21, 2009). NMFS received an addendum to the request on December

28, 2009. The Navy has complied with the measures required in 50 CFR 216.274 & 216.275, as well as the associated 2009 LOA, and submitted the reports and other documentation required in the final rule and the 2009 LOA.

Summary of Activity under the 2009 LOA

As described in the Navy's exercise reports (both classified and unclassified), in 2009, the training activities conducted by the Navy were within the scope and amounts contemplated by the final rule and authorized by the 2009 LOA. In fact, the amount of sonar use in 2009 was less than planned such that a recalculation of marine mammal takes suggests a reduction of 34% below the number estimated in the 2009 LOA.

Planned Activities for 2010

In 2010, the Navy expects to conduct the same type and general amount of training identified in the final rule and 2009 LOA, with a few increases in three sound source types.

Following are the modifications:

- The Navy anticipates an increase in the use of Extended Echo Ranging (EER)/Improved Extended Echo Ranging (IEER) SSQ–110A sonobuoys. Use will likely increase from 54 to 1675 sonobuoys annually.
- The Navy anticipates an increase in the use of Advanced Echo Ranging (AEER) SSQ–125 sonobuoys. Use will likely increase from 54 to 1150 sonobuoys annually.
- The Navy anticipates an increase in the use of the AN/SLQ–25 NIXIE towed countermeasure. Use will likely increase from 227 to 1600 hours annually.

While these modifications to Navy training are not expected to change the nature of the anticipated impacts to marine mammals, they are expected to result in minor increases in the number of individuals taken. However, when these increases are contemplated in light of the overall underuse of sonar proposed and actually used in 2009 (and the likelihood of the same in 2010), NMFS has determined the anticipated takes in 2010 will not effect marine mammals in a manner not previously considered or analyzed in NMFS' final rule and other associated documents.

Estimated Impacts for 2010

The Navy recalculated the estimated number of marine mammal takes based on the projected modifications in IEER, AEER, and NIXIE use (see the Navy's addendum to the LOA renewal application) and the result was a projected increase of between 0 and 111 takes annually for most species, with higher increases (590 and 293, respectively) for the very abundant California sea lion and short beaked common dolphin. These Navy estimates were based on projected increases in IEER, AEER, and NIXIE use and the original planned amount of use of the other sound sources. However, when these projected increases are balanced against the fact that the Navy used substantively fewer hours of other sonar sources in 2009, the authorization of the same amount of take for 2010 as was authorized in 2009 is appropriate. The anticipated training modifications will not affect marine mammals in a manner not previously considered or analyzed in NMFS' final rule and other associated documents.

Summary of Monitoring, Reporting, and other requirements under the 2009 LOA

Annual Exercise Reports

The Navy submitted their classified and unclassified 2009 exercise reports within the required timeframes and the unclassified report is posted on NMFS website: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. NMFS has reviewed both reports and they contain the information required by the 2009 LOA. The reports indicate the amounts of different types of training that occurred from January 8, 2009, through August 1, 2009, and estimate the amounts of training occurring from August 2, 2009, through January 7, 2010. As mentioned above, the amount of sonar use in SOCAL in 2009 was less than planned (e.g., 2 of 4 planned COMPTUEXs and 2 of 4 planned JTFEXs (both major exercises) were conducted) such that a recalculation of marine mammal takes suggests a reduction of 34% below the number estimated in the 2009 LOA.

The reports also list specific information gathered when marine mammals were detected by Navy watchstanders, such as how far an animal was from the vessel, whether sonar was in use, and whether it was powered or shut down. This information indicates that the Navy implemented the safety zone mitigation measures as required. No instances of obvious behavioral disturbance were reported by the Navy watchstanders in their 358 marine mammal sightings totaling 2683 animals.

Monitoring and Annual Monitoring Reports

The Navy conducted the monitoring required by the 2009 LOA and described in the Monitoring Plan, which included aerial and vessel surveys of sonar and exercises, passive acoustic monitoring utilizing high frequency acoustic recording packages (HARPs), and marine mammal tagging and tracking. The Navy submitted their 2009 Monitoring Report, which is posted on NMFS' website (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm*), within the required timeframe. The Navy included a summary of their 2009 monitoring effort and results (beginning on page 66 of the monitoring report) and the specific reports for each individual effort are presented in the appendices. Because data is gathered through August 1 and the report is due in October, some of the data analysis will occur in the subsequent year's report.

Integrated Comprehensive Management Program (ICMP) Plan

The ICMP will be used both as: (1) a planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy's monitoring and watchstander data, as well as new information from other Navy programs (e.g., R&D), and other appropriate newly published information. The Navy finalized a 2009 ICMP Plan outlining the program on December 22, 2009, as required by the 2009 LOA. The ICMP may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

The ICMP is a program that will be in place for years and NMFS and Navy anticipate the ICMP may need to be updated yearly in order to keep pace with new advances in science and technology and the collection of new data.. In the 2009 ICMP Plan, the Navy outlines three areas of targeted development for 2010, including:

- Identifying more specific monitoring sub-goals under the major goals that have been identified
- Characterizing Navy Range Complexes and Study Areas within the context of the prioritization guidelines described here
- Continuing to Develop Data Management, Organization and Access Procedures

Stranding Response Plan

NMFS and the Navy developed a Stranding Response Plan for SOCAL and certain components of the Plan were included as mitigation measures in the 2009 LOA. The Navy was required to work with NMFS to develop a communication plan to facilitate response and information exchange in

the event of a marine mammal stranding event. The communication plan was completed and disseminated to the necessary NMFS and Navy staff, although it is not available to the public because it contains personal information.

The Navy was also required to work with NMFS to develop a Memorandum of Agreement (MOA), or other mechanism consistent with federal fiscal law requirements to establish a framework whereby the Navy can assist NMFS with stranding investigations in certain circumstances. NMFS and the Navy have developed a draft memorandum of understanding (MOU) that is currently under review at both agencies. The MOU includes agreement between the NMFS and the Navy to further develop regional stranding investigation assistance plans to identify regional assets, equipment, locations, or services that Navy may be able to provide and the process by which this will operate within a given geographic area.

Adaptive Management and 2010 Monitoring Plan

NMFS and the Navy conducted an adaptive management meeting in October, 2009 wherein we reviewed the Navy monitoring results through August 1, 2009, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring. Because this is the first year of the regulation's period of effectiveness, the review only covered about 7 months of monitoring, which limited NMFS and the Navy's ability to undertake a robust review of the Navy's exercises and their effects on marine mammals. Based on the implementation of the 2009 monitoring, the Navy proposed some minor modifications to their monitoring plan for 2010, which NMFS agreed were appropriate. Beyond those changes, none of the information discussed led NMFS to recommend any modifications to the existing mitigation or monitoring measures. The final modifications to the monitoring plan and justifications are described in Section 13 of the Navy's 2010 LOA Application, which may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* As additional data is obtained in subsequent years, NMFS and Navy will be better positioned to conduct more extensive reviews and modify existing mitigation and monitoring measures, if appropriate.

Whale Strikes in 2009

In their SOCAL Range Complex Environmental Impact Statement (EIS), the Navy, in consultation with NMFS as a cooperating agency, determined that take of marine mammals incidental to ship strike was unlikely. Therefore, the Navy did not request (nor did NMFS grant) MMPA authorization for take of marine mammals from ship strikes in the 2009 SOCAL Range Complex LOA, nor was that take contemplated in the final SOCAL Range Complex regulations.

Following the issuance of these regulations and the LOA, two incidents occurred in which a Navy vessel associated with the activities covered by the regulations collided with and injured or killed (one strike resulted in a confirmed death, the ultimate status of the other whale is unknown) a large whale, one of which was later identified as a fin whale. Of note, in both cases the Navy was in compliance with the mitigation and monitoring measures required by the rule and LOA and contacted NMFS in a timely manner and provided the specific information outlined in the SOCAL Stranding Response Plan for whale strikes, as well as additional information.

In light of this new information NMFS is developing a proposed rule to amend the 2009 SOCAL Range Complex regulations. NMFS' proposed regulations would establish a framework to authorize the incidental take of large whales by injury or mortality fro the remainder of the five-year regulatory period.

Authorization

The Navy complied with the requirements of the 2009 LOA. Based on our review of the record, NMFS has determined that the marine mammal take resulting from the 2009 military readiness training and research activities falls within the levels previously anticipated, analyzed, and authorized, and was likely lower given the fact that Navy conducted fewer operations in 2009 than originally planned . Further, the level of taking authorized in 2010 for the Navy's SOCAL Range Complex activities is consistent with our previous findings made for the total taking allowed under the SOCAL Range Complex regulations. Finally, the record supports NMFS' conclusion that the total number of marine mammals taken by the 2010 activities in the SOCAL Range Complex will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued a one-year LOA for Navy training exercises conducted in the SOCAL Range Complex from January 22, 2010, through January 21, 2011.

Dated: January 20, 2010

James H. Lecky,

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

[FR Doc. 2010–1491 Filed 1–25–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AW86

Taking and Importing Marine Mammals; U.S. Navy Training in the Hawaii Range Complex

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

ACTION: Notice of issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notice is hereby given that NMFS has issued a letter of authorization (LOA) to the U.S. Navy (Navy) to take marine mammals incidental to training and research activities conducted within the Hawaii Range Complex (HRC) for the period of January 15, 2010 through January 14, 2011.

DATES: This Authorization is effective from January 15, 2010, through January 14, 2011.

ADDRESSES: The LOA and supporting documentation may be obtained by writing to P. Michael Payne, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301)713–2289, ext. 166.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or

kill or to attempt to harass, hunt, capture, or kill marine mammals.

Regulations governing the taking of marine mammals by the Navy incidental to training and research activities conducted within the Hawaii Range Complex (HRC) became effective on January 5, 2009 (74 FR 1455, January 12, 2009), and remain in effect until January 5, 2014. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements and establish a framework to authorize incidental take through the issuance of LOAs.

Summary of Request

On November 3, 2009, NMFS received a request from the Navy for a renewal of an LOA issued on January 8, 2009, for the taking of marine mammals incidental to training and research activities conducted within the HRC under regulations issued on January 5, 2009 (74 FR 1455, January 12, 2009). The Navy has complied with the measures required in 50 CFR 216.174 & 216.175, as well as the associated 2009 LOA, and submitted the reports and other documentation required in the final rule and the 2009 LOA.

Summary of Activity under the 2009 LOA

As described in the Navy's exercise reports (both classified and unclassified), in 2009, the training activities conducted by the Navy were within the scope and amounts contemplated by the final rule and authorized by the 2009 LOA. In fact, the number and type of some exercises were well below the Navy's proposed 2009 operations (e.g., the Navy conducted only one of the five major anti-submarine warfare training exercises proposed for 2009; utilized only a small fraction of the original number of explosives planned for 2009; and conducted no Sinking Exercises in 2009).

Planned Activities for 2010

In 2010, the Navy expects to conduct the same type and amount of training identified in the final rule and 2009 LOA, with a few clarifications and one modification, all of which are of little to no consequence to marine mammals. Following are the clarifications and modification:

- The rule identifies the AQS–22 as helicopter dipping sonar. To clarify, this source is representative of all helicopter dipping sonar, including the AQS–13, which has a lower source level. The higher level AQS–22 was used to model effects.
- The rule identifies the MK–48 as the torpedo. To clarify, this source is representative of all torpedoes, including the MK–46 and MK–54, which have lower source levels and lower net explosive weights. The higher level MK–48 was used to model effects.
- The rule identifies the BQQ–10 as submarine sonar. To clarify, this source is also representative of the BQQ–5 submarine sonar, which has similar sound source characteristics.
- The Navy is transitioning from the use of the Improved Extended Echo-ranging (IEER) system to the Advanced Extended Echo-ranging (AEER) system (described further below), i.e., they are adding the use of AEER and reducing use of IEER.
- Also, the Navy accidentally modeled a higher number of IEER sonobuoys (3600) than they intend to deploy (960), which resulted in a slight overestimate of the number of animals that would be taken.

Transition from the Use of IEER to AEER

The Navy is developing the AEER system as a replacement to the IEER system. The proposed AEER system is operationally similar to the existing IEER system. As described in the rule, IEER is deployed by Marine Patrol Aircraft as a large array of paired sonobuoys wherein the active sonobuoy (AN/SQQ–110A) generates a small explosion and then the passive sonobuoy (AN/SSQ–101) records the reflected echos of the impulsive sound generated by the detonation. Similarly, AEER is also deployed by Marine Patrol Aircraft as a large array of paired sonobuoys wherein the passive sonobuoy (AN/SSQ–101) records the reflected echos of the sound generated by the active sonobuoy. However, instead of using an explosive AN/SSQ–110A as an impulsive source for the active acoustic wave, the AEER will use a battery powered tonal source, the new active AN/SSQ–125 sonobuoy. In summary, the AEER is physically deployed in the same manner as the IEER, which was described in the rule, and uses the same sort of tonal source that has been analyzed elsewhere in the rule, for example for the AN/SSQ–62 sonobuoy.

For the purposes of analysis, replacement of the IEER system by the AEER system will be assumed to occur at 25% per year as follows: 2010 — up to ~ 25% replacement; 2011- up to ~ 50% replacement; 2012 — up to ~ 75% replacement; and from 2013 to 2015 — up to ~ 100% replacement, with no further use of the IEER system after 2015. Navy modeling indicates that a conversion factor of approximately 1.024 is necessary to convert the total number of estimated takes from IEER to AEER as a result of the difference in the active components in their systems. When this is applied to the amount of AEER usage planned for the HRC for 2010 (25% of 960 sonobuoys), no quantifiable change in the Navy's take estimates, or qualitative change in the nature of impacts, for IEER (now combined with AEER) usage occurs.

In sum, the clarifications and one modification to Navy training and research activities proposed in 2010, will have not effect marine mammals in a manner not previously considered or analyzed in NMFS' final rule and other associated documents.

Estimated Take for 2010

As mentioned above, in 2009 the Navy accidentally modeled 3600 IEER sonobuoys instead of 960 which resulted in minor overestimates in take (on the order of a few or less individuals for most species). Otherwise, the only change in the Navy's training activities in the HRC for 2010 is the beginning of the transition from IEER to AEER (which does not affect the take estimates or effects on marine mammals), and, therefore, NMFS is authorizing the same amount of take authorized in 2009.

Summary of Monitoring, Reporting, and other requirements under the 2009 LOA

Annual Exercise Reports

The Navy submitted their classified and unclassified 2009 exercise reports within the required timeframes and the unclassified report is posted on NMFS website: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. NMFS has reviewed both reports and they contain the information required by the 2009 LOA. The reports indicate the amounts of different types of training that occurred from January 8, 2009, through August 1, 2009, and estimate the amounts of training occurring from August 2, 2009, through January 7, 2010. As mentioned above, the Navy only conducted one of the 5 major anti-submarine warfare training exercises addressed in the rule and utilized only a small fraction of the explosives planned (no Sinking Exercises were conducted). No active sonar use occurred in the period from January 9, 2009, through April 15, 2009, either in the Humpback Cautionary Area or the larger dense humpback area generally shown on the Mobley map (73 FR 35510, page 35520) plus a 5–km buffer but not including the Pacific Missile Range Facility.

The reports also list specific information gathered when marine mammals were detected by Navy watchstanders, such as how far an animal was from the vessel, whether sonar was in use, and whether it was powered or shut down. This information indicates that the Navy implemented the safety zone mitigation measures as required. No instances of obvious behavioral disturbance were reported by the Navy watchstanders in their 24 marine mammal sightings totaling 135 animals.

Monitoring and Annual Monitoring Reports

The Navy conducted the monitoring required by the 2009 LOA and described in the Monitoring Plan, which included aerial and vessel surveys of sonar and explosive exercises, as well as ordering and purchasing acoustic recording devices to be used to gather data in subsequent years. The Navy submitted their 2009 Monitoring Report, which is posted on NMFS' website (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm*), within the required timeframe. The Navy included a summary of their 2009 monitoring effort and results (beginning on page 9 of the monitoring report) and the specific reports for each individual effort are presented in the appendices. Because data is gathered through August 1 and the report is due in October, some of the data analysis will occur in the subsequent year's report.

Integrated Comprehensive Management Program (ICMP) Plan

The ICMP will be used both as: (1) a planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy's monitoring and watchstander data, as well as new information from other Navy programs (e.g., R&D), and other appropriate newly published information. The Navy finalized a 2009 ICMP Plan outlining the program on December 22, 2009, as required by the 2009 LOA. The ICMP may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

The ICMP is a program that will be in place for years and NMFS and Navy anticipate the ICMP may need to be updated yearly in order to keep pace with new advances in science and technology and the collection of new data. In the 2009 ICMP Plan, the Navy outlines three areas of targeted development for 2010, including:

- Identifying more specific monitoring sub-goals under the major goals that have been identified
- Characterizing Navy Range Complexes and Study Areas within the context of the prioritization guidelines described here
- Continuing to Develop Data Management, Organization and Access Procedures

Stranding Response Plan

NMFS and the Navy developed a Stranding Response Plan for the HRC and certain components of the Plan were included as mitigation measures in the 2009 LOA. The Navy was required to work with NMFS to develop a communication plan to facilitate response and information exchange in the event of a marine mammal stranding event. The communication plan was completed and disseminated to the necessary NMFS and Navy staff, although it is not available to the public because it contains personal information.

The Navy was also required to work with NMFS to develop a Memorandum of Agreement (MOA), or other mechanism consistent with federal fiscal law requirements to establish a framework whereby the Navy can assist NMFS with stranding investigations in certain circumstances. NMFS and the Navy have developed a draft memorandum of understanding (MOU) that is currently under review at both agencies. The MOU includes agreement between the NMFS and the Navy to further develop regional stranding investigation assistance plans to identify regional assets, equipment, locations, or services that Navy may be able to provide and the process by which this will operate within a given geographic area.

Adaptive Management and 2010 Monitoring Plan

NMFS and the Navy conducted an adaptive management meeting in October, 2009 wherein we reviewed the Navy monitoring results through August 1, 2009, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring. Because this is the first year of the regulation's period of effectiveness, the review only covered about 7 months of monitoring, which limited NMFS and the Navy's ability to undertake a robust review of the Navy's exercises and their effects on marine mammals. Based on the implementation of the 2009 monitoring, the Navy proposed some minor modifications to their monitoring plan for 2010, which NMFS agreed were appropriate. Beyond those changes, none of the information discussed led NMFS to recommend any modifications to the existing mitigation or monitoring measures. The final modifications to the monitoring plan and justifications are described in Section 13 of the Navy's 2010 LOA Application, which may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. As additional data is obtained in subsequent years, NMFS and Navy will be better positioned to conduct more extensive reviews and modify existing mitigation and monitoring measures, if appropriate.

Authorization

The Navy complied with the requirements of the 2009 LOA. Based on our review of the record, NMFS has determined that the marine mammal take resulting from the 2009 military readiness training and research activities falls within the levels previously anticipated, analyzed, and authorized, and was likely lower given the fact that Navy conducted fewer operations in 2009 than originally planned. Further, the level of taking authorized in 2010 for the Navy's HRC training and research activities is consistent with our previous findings made for the total taking allowed under the HRC regulations. Finally, the record supports NMFS' conclusion that the total number of marine mammals taken by the 2010 HRC activities will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued a one-year LOA for Navy training exercises conducted in the HRC from January 15, 2010 through January 14, 2011.

Dated: January 20, 2010.

James H. Lecky,

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

[FR Doc. 2010–1495 Filed 1–25–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Health Board; DoD Task Force on the Prevention of Suicide by Members of the Armed Forces; Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, and in accordance with section 10(a)(2) of Public Law, the DoD Task Force on the Prevention of Suicide by Members of the Armed Forces (hereafter, Task Force) will meet on February 11, 2010, to gather information pertaining to suicide and suicide prevention programs for members of the Armed Services. Subject to the availability of space, the meeting is open to the public.

DATES: The meeting will be held from 9 a.m. to 4 p.m. on February 11, 2010.

ADDRESSES: The meeting will be held at the Norfolk Waterside Marriott, 235 E Main Street, Norfolk, Virginia 23510.

Written statements may be mailed to the address under **FOR FURTHER INFORMATION CONTACT,** e-mailed to *dhb@ha.osd.mil* or faxed to (703) 681–3317.

FOR FURTHER INFORMATION CONTACT: Col. JoAnne McPherson, Executive Secretary, DoD Task Force on Suicide Prevention by Members of the Armed Forces, One Skyline Place, 5205 Leesburg Pike, Suite 810, Falls Church, Virginia 22041–3206, (703) 681–3279, ext. 162, Fax: (703) 681–3317, *JoAnne.Mcpherson@tma.osd.mil.*

SUPPLEMENTARY INFORMATION:

Agenda

On February 11, 2010, the Task Force will receive briefings from community-based experts concerning efforts related to suicide and suicide prevention programs. Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165 and subject to availability of space, the meeting is open to the public.

Additional information, agenda updates, and meeting registration are available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb.* The public is encouraged to register for the meeting.

Written Statements

Any member of the public wishing to provide input to the Task Force should submit a written statement in accordance with 41 CFR 102–3.140(C) and section 10(a)(3) of the Federal Advisory Committee Act, and the procedures described in this notice. Written statement should be not longer than two type-written pages and must address the following detail: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals desiring to submit a written statement may do so through the Board's Designated Federal Officer (DFO) (*see* **FOR FURTHER INFORMATION CONTACT**). However, if the written statement is not received at least 10 calendar days prior to the meeting, which is subject to this notice, then it may not be provided to or considered by the Task Force until the next open meeting.

The DFO will review all timely submissions with the Task Force Co-Chairpersons, and ensure they are provided to members of the Task Force before the meeting that is subject to this notice. After reviewing the written comments, the Co-Chairpersons and the DFO may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The DFO, in consultation with the Task Force Co-Chairpersons, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Task Force.

Special Accommodations

If special accommodations are required to attend (sign language, wheelchair accessibility) please contact Ms. Severine Bennett at (202) 374–5755 or *bennett_severine@bah.com* by February 1, 2010.

Dated: January 21, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–1480 Filed 1–25–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 29, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 20, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Federal Family Education Loan (FFEL) Program, Federal Perkins Loan Program, and William D. Ford Federal Direct Loan (Direct Loan) Program Military Service Deferment/Post-Active Duty Student Deferment Request.

Frequency: On Occasion.

Affected Public: Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 16,000.

Burden Hours: 8,000.

Abstract: The Military Service/Post-Active Duty Student Deferment request

form serves as the means by which a FFEL, Perkins, or Direct Loan borrower requests a military service deferment and/or post-active duty student deferment and provides his or her loan holder with the information needed to determine whether the borrower meets the applicable deferment eligibility requirements. The form also serves as the means by which the U.S. Department of Education identifies Direct Loan borrowers who qualify for the Direct Loan Program's no accrual of interest benefit for active duty service members.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4203. 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 *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–1458 Filed 1–25–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before March 29, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 21, 2010.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.
Title: Conversion Magnet Schools Evaluation Revision.
Frequency: On occasion.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 50.
Burden Hours: 187.

Abstract: The Conversion Magnet Schools Evaluation is being conducted to determine if effort to turn around low-performing schools through converting to a Magnet Schools Assistance Program (MSAP) supported magnet schools are associated with improved student achievement and the reduction in minority group isolation. The Institute of Education Sciences, in collaboration with the Office of Innovation and Improvement, initiated the study due to the popularity and persistence of magnet programs and the inconclusive research on the relationship of these programs to important student outcomes. The study will use quasi-experimental designs to explore the relationship between magnet programs and student achievement both for "resident" students who attend magnet schools as their neighborhood schools and, if possible, for non-resident students. Data collection includes student records data, principal surveys, and project director interviews. The U.S. Department of Education has commissioned American Institutes for Research to conduct this study. An OMB clearance request that (1) described the study design and full data collection activities and (2) requested approval for the burden associated with the first three years of data collection was approved in 2007. This revision requests approval for the last two years of data collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4205. 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 *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–1486 Filed 1–25–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act; Notice of Virtual Public Forum for EAC Standards Board; Notice of Virtual Public Forum for EAC Standards Board

DATE & TIME: Monday, February 8, 2010, 9 a.m. EST through Friday, February 19, 2010, 9 p.m. EST.

PLACE: EAC Standards Board Virtual Meeting Room at *www.eac.gov.* Once at

the main page of EAC's Web site, viewers should click the link to the Standards Board Virtual Meeting Room. The virtual meeting room will open on Monday, February 8, 2010, at 9 a.m. EST and will close on Friday, February 19, 2010, at 9 p.m. EST. The site will be available 24 hours per day during that 12-day period.

PURPOSE: The EAC Standards Board will review and provide comment on Phase II of the Election Operations Assessment. Phase II of the Election Operations Assessment contains threat trees for the seven types of voting types covered by the Election Operations Assessment. These threat trees are intended to capture risks to the various types of voting systems and the possible mitigations. These threat trees feed into the Risk Assessment tool that will be used by the EAC and NIST in their work with the Voluntary Voting System Guidelines.

The EAC Standards Board Virtual Meeting Room was established to enable the Standards Board to conduct business in an efficient manner in a public forum, including being able to review and discuss draft documents, when it is not feasible for an in-person board meeting. The Standards Board will not take any votes or propose any resolutions during the 12-day forum of February 8–February 19, 2010. Members will post comments about Phase II of the Election Operations Assessment.

This activity is open to the public. The public may view the proceedings of this special forum by visiting the EAC Standards Board virtual meeting room at *http://www.eac.gov* at any time between Monday, February 8, 2010, 9 a.m. EST and Friday, February 19, 2010, 9 p.m. EST. The public also may view Phase II of the Election Operations Assessment, which will be posted on EAC's Web site beginning February 8, 2010. The public may file written statements to the EAC Standards Board at *standardsboard@eac.gov.* Data on EAC's Web site is accessible to visitors with disabilities and meets the requirements of section 508 of the Rehabilitation Act.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Alice Miller,

Chief Operating Officer, U.S. Election Assistance Commission.

[FR Doc. 2010–1619 Filed 1–22–10; 4:15 pm]

BILLING CODE 6820–KF–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act; Notice of Virtual Public Forum for EAC Board of Advisors

DATE & TIME: Monday, February 8, 2010, 9 a.m. EST through Friday, February 19, 2010, 9 p.m. EST.

PLACE: EAC Board of Advisors Virtual Meeting Room at *http://www.eac.gov.* Once at the main page of EAC's Web site, viewers should click the link to the Board of Advisors Virtual Meeting Room. The virtual meeting room will open on Monday, February 8, 2010, at 9 a.m. EST and will close on Friday, February 19, 2010, at 9 p.m. EST. The site will be available 24 hours per day during that 12-day period.

PURPOSE: The EAC Board of Advisors will review and provide comment on Phase II of the Election Operations Assessment. Phase II of the Election Operations Assessment contains threat trees for the seven types of voting types covered by the Election Operations Assessment. These threat trees are intended to capture risks to the various types of voting systems and the possible mitigations. These threat trees feed into the Risk Assessment tool that will be used by the EAC and NIST in their work with the Voluntary Voting System Guidelines.

The EAC Board of Advisors Virtual Meeting Room was established to enable the Board of Advisors to conduct business in an efficient manner in a public forum, including being able to review and discuss draft documents, when it is not feasible for an in-person board meeting. The Board of Advisors will not take any votes or propose any resolutions during the 12-day forum of February 8–February 19, 2010. Members will post comments about Phase II of the Election Operations Assessment.

This activity is open to the public. The public may view the proceedings of this special forum by visiting the EAC Board of Advisors virtual meeting room at *http://www.eac.gov* at any time between Monday, February 8, 2010, 9 a.m. EST and Friday, February 19, 2010, 9 p.m. EST. The public also may view Phase II of the election operations assessment, which will be posted on EAC's Web site beginning February 8, 2010. The public may file written statements to the EAC Board of Advisors at *boardofadvisors@eac.gov.* Data on EAC's Web site is accessible to visitors with disabilities and meets the requirements of section 508 of the Rehabilitation Act.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Alice Miller,

Chief Operating Officer, U.S. Election Assistance Commission.

[FR Doc. 2010–1623 Filed 1–22–10; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, has obtained emergency approval of an information collection request with the Office of Management and Budget (OMB). DOE is now is submitting a request to OMB for a three-year approval of that collection, OMB control no. 1910–5142.

This request, the Recovery Act Reviewer Web site information collection request, covers information necessary to collect the biographical information, educational background, and area of specialty of potential reviewers of financial assistance proposals under the American Recovery and Reinvestment Act of 2009. DOE will then use the information to select proposal reviewers.

DATES: Comments regarding this collection must be received on or before February 25, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4650.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tony Johnson, Program Analyst, Department of Energy, 1000 Independence Avenue, Washington, DC 20585 or by fax at 202–586–0573 or by e-mail at *Tony.Johnson@Hq.Doe.Gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–5142; (2) Information

Collection Request Title: Recovery Act Reviewer Web site (3) Purpose: This Web site uses approximately 30 information fields to ask for the biographical information, educational background, and area of specialty of potential reviewers of financial assistance proposals under the American Recovery and Reinvestment Act of 2009. DOE will then use the information to select reviewers; (4) Annual Estimated Number of Respondents: 2,000; (5) Annual Estimated Number of Total Responses: 2,000; (5) Annual Estimated Number of Burden Hours: 300; (6) Annual Estimated Reporting and Recordkeeping Cost Burden: 0.

Statutory Authority: Department of Energy Organization Act, Public Law 95–91, Section 5315, title 5, August 4, 1977, which vests the Secretary of Energy with the executive direction and management functions, authority, and responsibilities for the Department.

Issued in Washington, DC, on January 15, 2010.

Ingrid Kolb,

Director, Office of Management.

[FR Doc. 2010–1492 Filed 1–25–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Human Reliability Program (HRP), OMB Control Number 1910–5122. This information collection consists of forms that will certify to DOE that respondents were advised of the requirements for occupying or continuing to occupy an HRP position. The HRP is a security and safety reliability program for individuals who apply for or occupy certain positions that are critical to the national security. It requires an initial and annual supervisory review, medical assessment, management evaluation, and a DOE personnel security review of all applicants or incumbents. It is also used to ensure that employees assigned to nuclear explosive duties do not have emotional, mental, or physical conditions that could result in an accidental or unauthorized detonation of nuclear explosives.

DATES: Comments regarding this collection must be received on or before February 25, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503; and to Dane A. Woodard, U.S. Department of Energy, Office of Health, Safety and Security (HS–1.4), 1000 Independence Ave., SW., Washington, DC 20585, telephone (202) 586–4148, by fax at (202) 586–3312, or by e-mail at *dane.woodard@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information should be directed to Dane A. Woodard, U.S. Department of Energy, Office of Health, Safety and Security (HS–1.4), 1000 Independence Ave., SW., Washington, DC 20585, telephone (202) 586–4148, by fax at (202) 586–3312, or by e-mail at *dane.woodard@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *Current OMB Number:* 1910–5122; (2) *Information Collection Request Title:* Human Reliability Program; (3) *Purpose:* This collection provides for DOE management to ensure that individuals who occupy HRP positions meet program standards of reliability and physical and mental suitability; (4) *Estimated Number of Respondents:* 51,700; (5) *Estimated Total Burden Hours:* 31,020; (6) *Number of Collections:* The information collection request contains five (5) information and/or recordkeeping requirements.

Statutory Authority: 42 U.S.C. 2165; 10 CFR pt. 712.

Issued in Washington, DC, on January 20, 2010.

Lesley A. Gasperow,

Director, Office of Resource Management, Office of Health, Safety and Security.

[FR Doc. 2010–1496 Filed 1–25–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13572–000]

Issaquena County Board of Supervisors; Notice of Competing Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

January 15, 2010.

On August 25, 2009, Issaquena County Board of Supervisors filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Fitler Bend Hydrokinetic Project, to be located on the Mississippi River, in East Carroll Parish, Louisiana and Issaquena County, Mississippi.

The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Fitler Bend Hydrokinetic Project consists of: (1) 25 proposed 200 kilowatt Underwater Electric Kite generating units having a total installed capacity of 5 megawatts, mounted to a 200-foot-long by 80-foot-wide barge; (2) a 7-mile-long, 115 kilovolt transmission line; and (3) appurtenant facilities. The proposed Fitler Bend Hydrokinetic Project would have an average annual generation of 43.8 gigawatt-hours.

Applicant Contact: Gene Fulton, President, Issaquena County Board of Supervisors, 132 Court Street, Mayersville, MS 39113; phone: (662) 873–2761.

FERC Contact: Kim Carter, 202–502–6486.

Competing Application: This application competes with Project No. 13481–000 filed May 22, 2009. Competing applications must be filed on or before September 8, 2009.

Deadline for filing comments, motions to intervene: 60 days from the issuance of this notice. Comments, motions to intervene, may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First

Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13572) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1390 Filed 1–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13565–000]

Claire Fay and Charlie Hotchkin; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions

January 15, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* P–13565–000.

c. *Date filed:* August 4, 2009.

d. *Applicant:* Claire Fay and Charlie Hotchkin.

e. *Name of Project:* Alder Brook Mini Hydro Project.

f. *Location:* On the Alder Brook, near the town of Richford, Franklin County, Vermont. This project does not occupy federal lands.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Mr. Charles Hotchkin, 321 Prive Hill Road, Richford, Vermont 05476. (802) 933–2217.

i. *FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov* (202) 502–6093.

j. *Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions:* 60 days from the issuance of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov/docs-filing/ferconline.asp)* under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *Description of Project:* The Alder Brook Mini Hydro Project would consist of the following: (1) A 4-foot-wide by 8-foot-long by 3-foot-high drop inlet to be located below the Town of Richford's culvert on Alder Brook; (2) a 12-inch-diameter, 250-foot-long penstock; (3) a shed containing one generating unit with total installed generating capacity of 7.0 kilowatts (kW); and (4) a 170-foot-long transmission line from the shed to the barn. The project would have an average annual generation of 37,621 kilowatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this

proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1392 Filed 1–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 405–090; Project No. 1881–056]

Exelon Generation Company, LLC; PPL Holtwood, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 19, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project Nos.:* 405–090 and 1881–056.

c. *Date Filed:* July 16, 2009 for P–405–090 and October 28, 2009 for P–1881–056.

d. *Applicant:* Exelon Generation Company, LLC (Exelon), of Harford and Cecil counties in, MD and PPL Holtwood, LLC (PPL), of Lancaster and York Counties, PA.

e. *Name of Project:* Conowingo Project (P–405) and Holtwood Project (P–1881).

f. *Location:* The two projects are located on the Susquehanna River in Lancaster and York Counties, PA and Harford and Cecil Counties, MD.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* A. Karen Hill, Vice President, Exelon Corporation, 101 Constitution Ave., NW., Washington, DC 20001; telephone (202) 347–8092. Dennis J. Murphy, Vice President & Chief Operating Officer, PPL Holtwood, LLC, Two North Ninth Street (GENPL6), Allentown, Pennsylvania 18101; telephone (610) 774–4316.

i. *FERC Contact:* Anthony DeLuca, telephone (202) 502–6632, and e-mail address *Anthony.deluca@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* February 19, 2010. 30 days from the issuance of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov)* under the "e-filing" link. The Commission strongly encourages electronic filings.

All documents (original and eight copies) filed by paper should be sent to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the projects numbers (P–405–090 and P–1881–056) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request: Amendment to Projects' Boundaries:* (1) Exelon and PPL propose removing areas within their projects' boundaries that unnecessarily overlap. (2) Exelon requests removing other lands from its Conowingo project boundary that serve no project purpose and adding a shoreline buffer strip and a small area inundated by Conowingo Pond.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1394 Filed 1–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12737–002]

Jordan Limited Partnership; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

January 15, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original Major License.

b. *Project No.:* 12737–002.

c. *Date filed:* April 16, 2009.

d. *Applicant:* Jordan Limited Partnership.

e. *Name of Project:* Gathright Hydroelectric Project.

f. *Location:* On the Jackson River in Alleghany County, Virginia at the existing U.S. Army Corps of Engineers Gathright Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. James B. Price, W.V. Hydro, Inc., P.O. Box 903, Gatlinburg, Tennessee 37738 (865) 436–0402.

i. *FERC Contact:* Jeffrey Browning, (202) 502–8677 or *jeffrey.browning@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov/docs-filing/ferconline.asp)* under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. *Project Description:* The existing Corps facilities consist of: (1) The 257-foot-high, 1,172-foot-long rock-fill Gathright Dam with an impervious core with a 32-foot-wide top; (2) the 2,530-acre Lake Moomaw at a normal conservation pool water surface elevation of 1,582.0 feet National Geodetic Vertical Datum; (3) an outlet works comprised of an intake tower with 10 water quality intake gates, two intake tunnel passageways (north and south), an outlet tunnel, a stilling basin and outlet channel; and (4) an emergency spillway located 2.4-miles south of the dam comprised of an ungated and unpaved 2,680-foot-long, 100-foot-wide trapezoidal channel.

The proposed project would utilize the head created by the existing dam and consist of: (1) A new 155-foot-high, 16-foot-wide, 10-foot-deep intake module attached to the existing intake tower upstream of the south tunnel passageway trashrack; (2) one new 3.7-megawatt generating unit attached to the top of the intake module; (3) one new Francis turbine and draft tube at the bottom of the intake module; (4) a new 0.94-mile-long, 46-kilovolt transmission line; and (5) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, and prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1391 Filed 1–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12576–004]

CRD Hydroelectric, LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

January 15, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* P–12576–004.

c. *Date filed:* February 24, 2009.

d. *Applicant:* CRD Hydroelectric, LLC.

e. *Name of Project:* Red Rock Hydroelectric Project.

f. *Location:* On the Des Moines River, in Marion County, Iowa. The project would be located at the U.S. Army Corps of Engineers Red Rock Dam.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Douglas A. Spaulding, Nelson Energy LLC, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426; (952) 544–8133.

i. *FERC Contact:* Timothy Konnert, *Timothy.Konnert@ferc.gov,* (202) 502–6359.

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *(http://www.ferc.gov/docs-filing/ferconline.asp)* under the "eFiling" link. For a simpler method of submitting text only comments, click on "Quick Comment." For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is now ready for environmental analysis.

l. The proposed Red Rock Project would be located at the existing U.S. Army Corps of Engineers (Corps) Red Rock Dam. The existing Corps facilities consist of: (1) A 110-foot-high, 6,260-foot-long earth-fill dam with a 241-foot-long ogee spillway equipped with five 45-foot-high tainter gates; and (2) a 15,253-acre reservoir at a normal conservation pool water surface elevation of 742.0 feet National Geodetic Vertical Datum of 1929.

The proposed project would utilize the head created by the existing Corps dam and consist of: (1) A new 127-foot-long by 19-foot-wide intake structure connected to; (2) three new 19-foot-diameter, 211-foot-long penstocks passing through the left side of the spillway leading to; (3) a new 59-foot-long by 132-foot-wide powerhouse located directly downstream of the existing spillway structure containing three new 12.13-megawatt (MW) generating units with a total generating capacity of 36.4 MW; (4) a new 8.4-mile-long, 69-kilovolt transmission line; and (5) appurtenant facilities. The estimated average annual generation would be 158,000 megawatt-hours.

The project would be operated in run-of-river mode in that it would have no storage and only use flows released by the Corps in accordance with its present operations.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA. Staff intends to give at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application.

Notice of the availability of the EA: September 2010.

p. *A license applicant must file no later than 60 days following the date of issuance of this notice:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1389 Filed 1–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–13–000]

Wyoming Interstate Company, Ltd.; Notice of Intent To Prepare an Environmental Assessment for the Proposed WIC 2010 System Enhancement Project and Request for Comments on Environmental Issues

January 15, 2010.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the WIC 2010 System Enhancement Project (Project) involving construction and operation of facilities by Wyoming Interstate Company (WIC) in Weld and Sweetwater Counties, in Colorado and Wyoming, respectively. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process we will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on February 15, 2010.

This notice is being sent to the Commission's current environmental mailing for this project, which includes affected landowners; Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; parties to this proceeding; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice WIC provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site *(http://www.ferc.gov).*

Summary of the Proposed Project

The proposed Project would involve the modification of the Wamsutter Compressor Station and the construction and operation of approximately 2.43 miles of 20-inch-diameter pipeline from the Wamsutter Compressor Station to interconnections with Rockies Express Pipeline Company and Questar Overthrust Pipeline Company in Sweetwater County, Wyoming.

The Project would entail piping modifications at the Cheyenne Compressor Station in Weld County, Colorado, to enable the compression of gas in a westerly direction toward Wamsutter. The Wamsutter Compressor Station compressor modification, pipeline construction, and Cheyenne Compressor Station re-piping would accommodate up to approximately 285,000 dekatherms per day of transportation volumes for westbound deliveries.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed Project would disturb about 35.9 acres of land for the aboveground facilities and the pipeline. Following construction, about 16.8 acres would be maintained for permanent operation of the project's facilities; the remaining acreage would be restored and allowed to revert to former uses.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we[2] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species;
- cumulative impacts; and,
- public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to those on our environmental mailing list (see discussion of how to remain on our mailing list on page 5). A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your written comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before February 15, 2010.

For your convenience, there are three methods which you can use to submit your written comments to the Commission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located at *http://www.ferc.gov* under the link called "*Documents and Filings*". A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the "eFiling" feature that is listed under the "*Documents and Filings*" link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file to your submission. New eFiling users must first create an account by clicking on the links called "*Sign up*" or "*eRegister*". You will be

[1] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of appendices were sent to all those receiving this notice in the mail and are available at *http://www.ferc.gov* using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] "We", "us", and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may file your comments with the Commission via mail by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

In all instances, please reference the project docket number CP10–13–000 with your submission. Label one copy of the comments for the attention of Gas Branch 3, PJ–11.3.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities (as defined in the Commission's regulations).

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an "intervenor," which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the Internet at *http://www.ferc.gov* using the "eLibrary" link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits, in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1387 Filed 1–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–6223–000]

Favinger, Thomas; Notice of Filing

January 19, 2010.

Take notice that on January 15, 2010, Mr. Thomas G. Favinger filed an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 5, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1396 Filed 1–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–33–000]

New York Independent System Operator, Inc; Notice of Filing

January 15, 2010.

Take notice that on January 8, 2010, New York Independent System Operator, Inc. (NYISO), pursuant to section 207 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 385.207 (2009), filed a petition that the Commission grant a declaratory order clarifying the status of New York Power Authority's Grandfathered Transmission Congestion Contracts under Attachment L of the NYISO Open Access Transmission Tariff after the original 825 MW Charles A. Poletti unit ceases to operate and also grant them a limited waiver.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 8, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1393 Filed 1–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–566–000]

Cosa Geothermal Power Holdings, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 15, 2010.

This is a supplemental notice in the above-referenced proceeding of Cosa Geothermal Power Holdings, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is February 4, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1388 Filed 1–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Peer Review Best Practices Workshop

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

ACTION: Notice of public meeting.

SUMMARY: The DOE Office of Energy Efficiency and Renewable Energy (EERE) funds a diverse portfolio of research, development, demonstration and deployment programs and has used a variety of peer review approaches to select the best projects to perform this work. To ensure that EERE continues to fund a robust portfolio, an information exchange will be held on recent studies of federal review processes and processes different federal and non-federal organizations have chosen to select research and development projects, and on "best practices" for reviewing and selecting project proposals. The workshop will explore classic peer review processes such as those at NSF, NIH, and the DOE Office of Science for advanced research projects, as well as approaches like those of DARPA or NIST for projects focused on development and demonstration projects having significant industry cost share. To attend the meeting, please e-mail *JoAnn.Milliken@ee.doe.gov.* Please identify your affiliation and state whether or not you plan to provide comments during the public comment period.

DATES: Tuesday, January 26, 2010 8:30 a.m.–3 p.m.

ADDRESSES: 1307 New York Avenue, NW., Suite 400, Washington, DC 20005–4722.

FOR FURTHER INFORMATION CONTACT: *JoAnn.Milliken@ee.doe.gov*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To examine best practices for peer review of research, development, demonstration and deployment projects.

Tentative Agenda (Subject To Change)

8:30 a.m. Continental Breakfast
9 a.m. Opening Remarks—Henry Kelly, Principal Deputy Assistant Secretary, DOE/EERE
9:15 a.m. Keynote Address: Bill Bonnvillian, MIT
9:45 a.m. Panel 1: Basic Science—NSF, NIH, DOE/SC, UCSB
11 a.m. Break
11:15 a.m. Panel 2: Applied Research, Technology Development—NIST, ARPA–E, ONR, MIT
12:30 p.m. Lunch
1 p.m. Panel 3: Corporate/Business—Dow, Other TBD
2:15 p.m. Roundtable
3 p.m. Public Comments
3:15 p.m. Adjourn

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the workshop and to make oral statements during a specified period for public comment. The public comment period will take place between 3:00 p.m. and 3:15 p.m. on January 26, 2010. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, e-mail *JoAnn.Milliken@ee.doe.gov.* Please indicate if you will be attending the meeting, whether you want to make an oral statement, and what organization you represent (if appropriate). Members of the public will be heard in the order in which they sign up for the public comment period. Oral comments should be limited to two minutes in length.

Reasonable provision will be made to include the scheduled oral statements on the agenda. If you would like to file a written statement, you may do so either by submitting a hard copy at the meeting or by submitting an electronic copy to *JoAnn.Milliken@ee.doe.gov.*

Minutes: The minutes of the meeting will be available for public review at *http://eere.energy.gov.*

Issued at Washington, DC, on January 21, 2010.

Henry Kelly,

Principal Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–1490 Filed 1–25–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance at North American Electric Reliability Corporation Meetings

January 19, 2010.

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following North American Electric Reliability Corporation meetings:

NERC Board of Trustees Meeting

February 15, 2010, Monday, Phoenix, AZ, 1 p.m. to 5 p.m. MT
February 16, 2010, Tuesday, Phoenix, AZ, 8 a.m. to 12 p.m. MT

The meetings scheduled to be held in Phoenix will take place at: Arizona Grand Resort, 8000 South Arizona Grand Parkway, Phoenix, AZ 85044.

Further information may be found at *http://www.nerc.com.*

The above-referenced meetings are open to the public.

The discussions at each of the meetings described above may address matters at issue in the following proceedings:

Docket No. RC08–5, *North American Electric Reliability Corporation*
Docket No. RC08–4, *North American Electric Reliability Corporation*
Docket No. RC09–3, *North American Electric Reliability Corporation*
Docket No. RR09–7, *North American Electric Reliability Corporation*
Docket No. RR10–1, *North American Electric Reliability Corporation*
Docket No. RR10–2, *North American Electric Reliability Corporation*
Docket No. RR10–3, *North American Electric Reliability Corporation*
Docket No. RR10–4, *North American Electric Reliability Corporation*
Docket No. RR10–5, *North American Electric Reliability Corporation*
Docket No. RR09–4, *North American Electric Reliability Corporation*
Docket No. RR09–9, *North American Electric Reliability Corporation*
Docket No. RD09–4, *North American Electric Reliability Corporation*
Docket No. RD09–5, *North American Electric Reliability Corporation*
Docket No. RD09–7, *North American Electric Reliability Corporation*
Docket No. RD09–8, *North American Electric Reliability Corporation*
Docket No. RD09–10, *North American Electric Reliability Corporation*
Docket No. RD09–11, *North American Electric Reliability Corporation*
Docket No. RD10–2, *North American Electric Reliability Corporation*
Docket No. RD10–3, *North American Electric Reliability Corporation*
Docket No. RD10–4, *North American Electric Reliability Corporation*
Docket No. RD10–5, *North American Electric Reliability Corporation*
Docket No. RD10–6, *North American Electric Reliability Corporation*
Docket No. RD10–7, *North American Electric Reliability Corporation*
Docket No. RD10–8, *North American Electric Reliability Corporation*
Docket No. RD10–9, *North American Electric Reliability Corporation*

For more information, contact Jonathan First, Office of the General Counsel-Energy Markets, Federal Energy Regulatory Commission at (202) 502–8529 or *jonathan.first@ferc.gov,* or Edward Franks, Office of Electric Reliability, Federal Energy Regulatory Commission at (202) 502–6311 or *edward.franks@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–1395 Filed 1–25–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–OAR–2008–0682; FRL–9106–5]

Adequacy Status of the Cleveland/Akron, Ohio Submitted Annual Fine Particulate Matter Attainment Demonstration for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets (MVEBs) for fine particulate matter ($PM_{2.5}$) and oxides of nitrogen (NO_X) as a precursor to fine particulate matter in the Cleveland/Akron, Ohio area are adequate for use in transportation conformity determinations. Ohio submitted the Cleveland/Akron area budgets with the attainment demonstration submittal initially on July 16, 2008, and subsequently submitted the public hearing results on December 5, 2008. As a result of our finding, the Cleveland/Akron, Ohio area must use the MVEBs from the submitted $PM_{2.5}$ attainment demonstration plan for future transportation conformity determinations.

DATES: This finding is effective February 10, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Criteria Pollutant Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656, *morris.patricia@epa.gov.*

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

Background

Today's notice is simply an announcement of a finding that we have already made. On December 7, 2009, EPA Region 5 sent a letter to the Ohio Environmental Protection Agency stating that the 2009 MVEBs for the Cleveland/Akron, Ohio area, which were submitted with the state's $PM_{2.5}$ attainment demonstration, are adequate. Receipt of these MVEBs was announced on EPA's transportation conformity Web site, and no comments were submitted. The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

The adequate 2009 MVEBs, in tons per year (tpy), for $PM_{2.5}$ and NO_X for the Cleveland/Akron, Ohio area are as follows:

CLEVELAND/AKRON, OHIO

	$PM_{2.5}$ (tpy)	NO_X (tpy)
2009	818.11	43553.48

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do

conform. Conformity to a State Implementation Plan (SIP) means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). We have described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004 preamble starting at 69 FR 40038, and we used the information in these resources while making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

The finding and the response to comments are available at EPA's transportation conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Authority: 42 U.S.C. 7401–7671q.

Dated: January 13, 2010.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. 2010–1462 Filed 1–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–OAR–2008–0682; FRL–9106–4]

Adequacy Status of the Steubenville, OH and the Canton, OH Submitted Annual Fine Particulate Matter Attainment Demonstration for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets (MVEBs) for fine particulate matter ($PM_{2.5}$) and oxides of nitrogen (NO_x) as a precursor to fine particulate matter in Steubenville, Ohio (Jefferson County) and Canton, Ohio (Stark County) are adequate for use in transportation conformity determinations. Ohio submitted the Steubenville and Canton area budgets with the attainment demonstration submittal initially on July 16, 2008, and subsequently submitted the public hearing results on December 5, 2008. As a result of our finding, the Steubenville, Ohio area (Jefferson County) and the Canton, Ohio area (Stark County) must use the MVEBs from the submitted $PM_{2.5}$ attainment demonstration plan for future transportation conformity determinations.

DATES: This finding is effective February 10, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Criteria Pollutant Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656, *morris.patricia@epa.gov.*

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

Background

Today's notice is simply an announcement of a finding that we have already made. On December 7, 2009, EPA Region 5 sent a letter to the Ohio Environmental Protection Agency stating that the 2009 MVEBs for the Steubenville area, and also for the Canton area, which were submitted with the state's $PM_{2.5}$ attainment demonstration, are adequate. Receipt of these MVEBs was announced on EPA's transportation conformity website, and no comments were submitted. The finding is available at EPA's conformity web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

The adequate 2009 MVEBs, in tons per year (tpy), for $PM_{2.5}$ and NO_X for the Steubenville area and the Canton area are as follows:

STEUBENVILLE (JEFFERSON COUNTY), OHIO

	$PM_{2.5}$ (tpy)	NO_X (tpy)
2009	19.80	1208.81

CANTON (STARK COUNTY), OHIO

	$PM_{2.5}$ (tpy)	NO_X (tpy)
2009	88.38	5103.36

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a State Implementation Plan (SIP) means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). We have described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004, preamble starting at 69 FR 40038, and we used the information in these resources while making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

The finding and the response to comments are available at EPA's transportation conformity web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Authority: 42 U.S.C. 7401–7671 q.

Dated: January 13, 2010.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. 2010–1461 Filed 1–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2006–0369; FRL–9107–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Estuary Program (Renewal); EPA ICR No. 1500.07, OMB Control No. 2040–0138

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 25, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2006–0369, to (1) EPA online using

www.regulations.gov (our preferred method), by e-mail to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket (Mail Code: 28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nell Orscheln, Oceans and Coastal Protection Division, Office of Wetlands, Oceans, and Watersheds, Mail Code 4504T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 566–2102; *fax number:* (202) 566–1336; *e-mail address: Orscheln.nell@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 8, 2009 (74 FR 51849), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2006–0369, which is available for online viewing at *www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: National Estuary Program (Renewal).

ICR numbers: EPA ICR No. 1500.07, OMB Control No. 2040–0138.

ICR Status: This ICR is scheduled to expire on January 31, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract:

Annual Workplans: The National Estuary Program (NEP) involves collecting information from the state or local agency or nongovernmental organizations that receive funds under Sec. 320 of the Clean Water Act (CWA). The regulation requiring this information is found at 40 CFR Part 35. Prospective grant recipients seek funding to develop or oversee and coordinate implementation of Comprehensive Conservation Management Plans (CCMPs) for estuaries of national significance. In order to receive funds, grantees must submit an annual workplan to EPA. The workplan consists of two parts: (a) Progress on projects funded previously; and (b) new projects proposed with dollar amounts and completion dates. The workplan is reviewed by EPA and also serves as the scope of work for the grant agreement. EPA also uses these workplans to track performance of each of the 28 estuary programs currently in the NEP.

Program Evaluations: EPA provides funding to NEPs to support long-term implementation of CCMPs if such programs pass a program evaluation process. The primary purpose of the program evaluation process is to help EPA determine whether the 28 programs included in the National Estuary Program (NEP) are making adequate progress implementing their CCMPs and therefore merit continued funding under Sec. 320 of the Clean Water Act. Continued funding for each NEP under Sec. 320 of the CWA is contingent upon Congress appropriating sufficient funds to the EPA for the purpose of implementing the NEP. The program evaluation process also is useful for highlighting environmental results; highlighting strengths and challenges in program management; demonstrating continued stakeholder commitment; assessing the progress of the NEP as a national program; and transferring lessons learned within EPA, among NEPs, and with other watershed programs. For this ICR cycle, program evaluations will be required for nine programs in FY2010, nine programs in FY2011, and ten programs in 2012.

Government Performance Results Act: EPA requests that each of the 28 NEPs receiving Sec. 320 funds report information that can be used in the GPRA reporting process. This reporting is done on an annual basis and is used to show environmental results that are being achieved within the overall NEP Program. This information is ultimately submitted to Congress along with GPRA information from other EPA programs.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 100 hours per response for annual workplans, 250 hours per response for program evaluations, and 25 hours per response for GPRA reporting. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States with National Estuary Programs.

Estimated Number of Respondents: 28.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 5,833.

Estimated Total Annual Cost: $241,558, this includes no annualized capital or O&M costs.

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: January 20, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–1469 Filed 1–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R03–CPB–2009–0500; FRL–9106–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Chesapeake Registry; EPA ICR No. 2365.02, OMB Control No. 2003–0001

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before February 25, 2010.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–R03–CBP–2009–0500, to both EPA and OMB. For EPA use one of the following three methods:

- *http://www.regulations.gov* (our preferred method). Follow the on-line instructions for submitting.
- *Mail:* EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *E-mail: docket.oeca@epa.gov.*

For OMB mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marguerite Duffy, USEPA Region III—Chesapeake Bay Program, Annapolis City Marina, 410 Severn Avenue Suite 109 (3CB10), Annapolis, MD 21403; telephone number: (410) 267–5764; fax number: (410) 267–5777; e-mail address: *duffy.marguerite@epa.gov;* or Doreen Vetter, telephone number (410) 267–5780; e-mail address: *vetter.doreen@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 23, 2009 (74 FR 54801), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d) and received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–R03–CBP–2009–0500, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center 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 Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," key in the docket ID number identified above, and hit the "Submit" icon. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Chesapeake Registry.

ICR numbers: EPA ICR No. 2365.02, OMB Control No. 2003–0001.

ICR Status: This ICR is scheduled to expire on February 28, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: In 2008, EPA's Region III Chesapeake Bay Program Office (CBPO) and its partners developed the Chesapeake Action Plan (CAP) to strengthen and expand partnerships in the watershed, enhance coordination of restoration activities, and increase the collective accountability for protecting the Chesapeake Bay. One component described in the CAP is a Web-enabled reporting system known as the Activity Integration Plan now titled Chesapeake Registry. Through this reporting system, participating organizations provide data about the activities in which they are currently engaged, or plan to be engaged in, to protect and restore the Chesapeake Bay and its watershed. The ability to capture and account for Bay-wide implementation activities was developed in response to recommendations by the Government Accountability Office and directives of the Explanatory Statement of the Fiscal Year (FY) 2008 Consolidated Appropriations Act (Pub. L. 110–161). CBPO conducted its first activity data call in 2008 that included 10 Federal agencies, 7 States, and 2 local organizations.

The EPA, on behalf of the partnership, intends to expand the data call to more than 10 non-federal agencies and organizations to strengthen the information base on which to support implementation decisions and more recently, to support Executive Order (EO) 13508, signed by President Barack Obama on May 12, 2009. Section 203(d) of the EO directs EPA to identify the "mechanisms that will assure that governmental and other activities, including data collection and distribution, are coordinated and effective, relying on existing mechanisms where appropriate."

Section 204 further directs that "Federal actions to protect and restore the Chesapeake Bay are closely coordinated with actions by State and local agencies in the watershed and that the resources, authorities, and expertise of Federal, State, and local agencies are used as efficiently as possible." The Chesapeake Registry and associated data calls provide a mechanism for coordinated data collections among federal and nonfederal entities protecting and restoring the Bay and its watershed, and the information

necessary to adaptively manage the program in support of these mandates.

The Chesapeake Registry includes detailed information about the activities and funding conducted and planned by partner and stakeholder organizations. The organizations provide project information on the nature of the activity, responsible organization, organizational point of contact, resource levels, geographic location, and major milestones on progress towards Chesapeake Bay protection and restoration efforts. Funds reported in the Chesapeake Registry are linked to an organization's own resource base so that data associated with a set of funds is entered only by the originator of the funding. The information is organized by programmatic goal and desired result, which aligns activities to the goals of the program and helps to provide an accurate depiction of restoration activities, progress, and results. The information collection, as envisioned, will be conducted annually. Summary level information from the Chesapeake Registry is available at *http://cap.chesapeakebay.net.*

Each reporting organization is assigned a user ID and password. Security measures have been established to protect data that have been entered, including maintaining the data on a secure server on a secure network, and confirming the data with each reporting organization. Participants in the information collection are able to search the reporting system database application and view standard reports. Partners will use the enhanced and expanded data to update performance management dashboards that summarize and synthesize information so the program partners and stakeholders can understand, at a glance, the progress being made in key program areas. The dashboards include measures of progress, information about resources and strategic analyses of what needs to be done to improve implementation. In addition, EPA anticipates that some of the partners and stakeholders will use the reporting system as a tool for their own management and planning efforts.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 64.8 hours per response for state and local government agencies and 11.5 hours per response for non-government organizations. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and local governments and non-government organizations within the Chesapeake Bay watershed.

Estimated Number of Respondents: 50 (30 State and local governments, 20 non-government organizations) initially but will likely increase over time.

Frequency of Response: Annual.

Estimated Total Annual Hour Burden: 1,001.

Estimated Total Annual Cost: $56,738.

Changes in the Estimates: EPA anticipates an annual, gradual change in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

Dated: January 20, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–1467 Filed 1–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0492; FRL–9105–9]

Release of Draft Documents Related to the Review of the National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of draft documents for public comment.

SUMMARY: On or about January 19, 2010, the Office of Air Quality Planning and Standards (OAQPS) of EPA is making available for public comment a draft assessment document titled, *Particulate Matter Urban-Focused Visibility Assessment—Second External Review Draft.* On or about January 29, 2010, OAQPS is making available for public comment a second draft assessment document titled, *Quantitative Health Risk Assessment for Particulate Matter—Second External Review Draft.* These two draft assessment documents describe the quantitative analyses that are being conducted as part of the review of the national ambient air quality standards (NAAQS) for particulate matter (PM). In addition, on or about February 26, 2010, OAQPS will make available for public comment a third draft document titled, *Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards—First External Review Draft.*

DATES: Comments should be submitted on or before March 15, 2010, for the draft document titled, *Particulate Matter Urban-Focused Visibility Assessment—Second External Review Draft and Quantitative Health Risk Assessment for Particulate Matter—Second External Review Draft.* Comments should be submitted on or before April 12, 2010, for the draft document titled, *Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards—First External Review Draft.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0492, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2007–0492.
- *Fax:* Fax your comments to 202–566–9744, Attention Docket ID No. EPA–HQ–OAR–2007–0492.
- *Mail:* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2007–0492.
- *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, 1301 Constitution Ave., 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–2007–0492. The EPA's policy is that all comments received will be included in the public 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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742; fax 202–566–9744.

FOR FURTHER INFORMATION CONTACT: For questions related to the draft document titled, *Particulate Matter Urban-Focused Visibility Assessment—Second External Review Draft (*EPA–452/P–10–002; January 2010), please contact Ms. Vicki Sandiford, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *sandiford.vicki@epa.gov;* telephone: 919–541–2629; fax: 919–541–0237.

For questions related to the draft document titled, *Quantitative Health Risk Assessment for Particulate Matter—Second External Review Draft* (EPA–452/P–10–001; January 2010), please contact Dr. Zachary Pekar, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *pekar.zachary@epa.gov;* telephone: 919–541–3704; fax: 919–541–0237.

For questions related to the draft document titled, *Policy Assessment for the Review of the Particulate Matter National Ambient Air Quality Standards: First External Review Draft* (EPA–452/P–10–003; February 2010), please contact Ms. Beth Hassett-Sipple, Office of Air Quality Planning and Standards (Mail code C504–06), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *hassett-sipple.beth@epa.gov;* telephone: 919–541–4605; fax: 919–541–0237.

General Information

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

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

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

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- 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.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Make sure to submit your comments by the comment period deadline identified.

SUPPLEMENTARY INFORMATION: Under section 108(a) of the Clean Air Act (CAA), the Administrator identifies and lists certain pollutants which "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." The EPA then issues air quality criteria for these listed pollutants, which are commonly referred to as "criteria pollutants." The air quality criteria are to "accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air, in varying quantities." Under section 109 of the CAA, EPA establishes primary (health-based) and secondary (welfare-based) NAAQS for pollutants for which air quality criteria are issued. Section 109(d) of the CAA requires periodic review and, if appropriate, revision of existing air quality criteria. The revised air quality criteria reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. The EPA is also required to periodically review and, if appropriate, revise the NAAQS based on the revised air quality criteria.

Air quality criteria have been established for PM and NAAQS have been established for $PM_{2.5}$ and PM_{10} to provide protection from fine and coarse particles, respectively. Presently, EPA is reviewing the air quality criteria and NAAQS for PM. The EPA's overall plan and schedule for this review is presented in the *Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter.*[1] A draft of the integrated review plan was released for public review and comment in October 2007 and was the subject of a consultation with the Clean Air Scientific Advisory Committee (CASAC) on November 30, 2007 (72 FR 63177; November 8, 2007).[2] Comments received from that consultation and from the public were considered in finalizing the plan and in beginning the review of the air quality criteria.

[1] EPA 452R–08–004; March 2008; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_pd.html.*

[2] See *http://yosemite.epa.gov/sab/sabproduct.nsf/WebProjectsbyTopicCASAC!OpenView for more information on CASAC activities related to the current PM NAAQS review.*

As part of EPA's review of the primary and secondary PM NAAQS,[3] the Agency is conducting quantitative assessments characterizing (1) the health risks associated with exposure to ambient PM, and (2) urban visibility impairment associated with ambient PM. The EPA's plans for conducting these assessments, including the proposed scope and methods of the analyses, were presented in two planning documents titled, *Particulate Matter National Ambient Air Quality Standards: Scope and Methods Plan for Health Risk and Exposure Assessment and Particulate Matter National Ambient Air Quality Standards: Scope and Methods Plan for Urban Visibility Impact Assessment* (henceforth, Scope and Methods Plans).[4] These documents were released for public comment in February 2009 and were the subject of a consultation with the CASAC on April 2, 2009 (74 FR 11580; March 18, 2009).

The draft assessment documents announced today convey the approaches taken to assess exposures to ambient PM and to characterize associated health risks or urban visibility impairment, as well as present the initial key results, observations, and related uncertainties associated with the quantitative analyses performed. Earlier drafts of these documents were released for CASAC review and public comment in September 2009 (74 FR 46589; September 10, 2009). The EPA extended the public comment period to provide stakeholders and the public with adequate time to conduct analyses and prepare meaningful comments (74 FR 51148; October 5, 2009). The first draft assessment documents were the subject of a CASAC review meeting on October 5 and 6, 2009 (74 FR 46586; September 10, 2009).

The second draft titled, *Particulate Matter Urban-Focused Visibility Assessment* will be available on or about January 19, 2010. The second draft *Quantitative Health Risk Assessment for Particulate Matter* will be available on or about January 29, 2010, through the Agency's Technology Transfer Network (TTN) Web site at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_risk.html.*

In addition, on or about February 26, 2010, EPA will make available a third draft document titled *Policy Assessment for the Review of the National Ambient Air Quality Standards: First External Review Draft.* This document will serve to "bridge the gap" between the scientific information and the judgments required of the Administrator in determining whether it is appropriate to retain or revise the standards. The Policy Assessment will build upon information presented in the *Integrated Science Assessment for Particulate Matter* (Final Report)[5] and the two draft assessment documents described above. The first draft Policy Assessment may be accessed online through EPA's TTN Web site at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_pa.html.*

The EPA is soliciting advice and recommendations from the CASAC by means of a review of these three draft documents at upcoming public meetings of the CASAC that will be held in March 2010. Information about these public meetings, including the dates and locations, will be published as a separate notice in the **Federal Register.** Following the CASAC meetings, EPA will consider comments received from the CASAC and the public in preparing revisions to these documents.

The draft documents briefly described above do not represent and should not be construed to represent any final EPA policy, viewpoint, or determination. The EPA will consider any public comments submitted in response to this notice when revising the documents.

Dated: January 15, 2010.

Jeffrey S. Clark,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2010–1464 Filed 1–25–10; 8:45 am]

BILLING CODE 6560–50–P

[3] See *http://www.epa.gov/ttn/naaqs/review.html* for more information on the NAAQS review process.

[4] EPA–452/P–09–001 and –002; February 2009; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_pd.html.*

[5] EPA/600/R–08/139F; December 2009; Available: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_2007_isa.html.*

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9106–8]

Science Advisory Board Staff Office; Notification of a Clean Air Scientific Advisory Committee (CASAC); Ambient Air Methods and Monitoring Subcommittee (AAMMS); Meeting and Public Teleconference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office is announcing a public meeting of the Clean Air Scientific Advisory Committee (CASAC) Ambient Air Monitoring & Methods Subcommittee (AAMMS or Subcommittee) to provide advice concerning ambient air monitoring issues for the Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) related to urban visibility. The chartered CASAC will subsequently hold a public teleconference to review and approve the Subcommittee's report.

DATES: The CASAC AAMMS meeting will be held on Tuesday, February 24, 2010 from 9 a.m. to 5:30 p.m. (Eastern Time) and Wednesday, February 25, 2010 from 8 a.m. to 2 p.m. (Eastern Time). The public teleconference will be held on March 26, 2010 from 10 a.m. to 12 p.m. (Eastern Time).

ADDRESSES: The public meeting will be held at the SAB Conference Center at 1025 F Street, NW., Suite 3700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to submit a written or brief oral statement or wants further information concerning the February 24–25, 2010 meeting may contact Ms. Kyndall Barry, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343–9868; fax (202) 233–0643; or e-mail at *barry.kyndall@epa.gov.* For information on the CASAC teleconference on March 26, 2010, please contact Dr. Holly Stallworth, Designated Federal Officer (DFO), at the above listed address; via telephone/voice mail (202) 343–9867 or e-mail at *stallworth.holly@epa.gov.* General information concerning the CASAC and the CASAC documents can be found on the EPA Web site at *http://www.epa.gov/casac.*

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the Federal Advisory Committee Act, Public Law 92–463 5 U.S.C., App. 2 (FACA), notice is hereby given that the CASAC AAMMS will hold a public meeting to provide advice on monitoring issues related PM urban visibility and that the chartered CASAC will hold a public teleconference to review and approve the Subcommittee's draft report. The Clean Air Scientific Advisory Committee (CASAC) was established under section 109(d)(2) of the Clean Air Act (CAA or Act) (42 U.S.C. 7409) as an independent scientific advisory committee. CASAC provides advice, information and recommendations on the scientific and technical aspects of air quality criteria and national ambient air quality standards (NAAQS) under sections 108 and 109 of the Act. The CASAC Panel and chartered 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 particulate matter. The EPA Office of Air and Radiation requested AAMMS advice on monitoring issues related to urban visibility. In October 2006, EPA issued the final rule to revise both the primary and secondary NAAQS for PM (71 FR 61144) and retain PM_{10} as the indicator for thoracic coarse particles. The secondary standards for $PM_{2.5}$ and PM_{10} were set identical to the respective primary standards to address PM-related welfare effects including visibility impairment, effects on vegetation and ecosystems, materials damage and soiling, and effects on climate change. The Agency is considering development of a specific indicator for urban visibility in support of a future secondary NAAQS. CASAC has been asked to provide advice on proposed options for an urban visibility indicator, and any methods and equipment for its direct measurement. The Agency is also seeking advice from AAMMS on options for a potential pilot monitoring network and/or a nationwide enforcement network for PM welfare effects. The chartered CASAC will hold a public teleconference to review the AAMMS draft report on March 26, 2010.

Technical Contacts: Any technical questions concerning the indicator and ambient air monitoring issues related to the PM NAAQS can be directed to Mr. Tim Hanley, OAQPS, at *hanley.tim@epa.gov* or (919) 541–4417.

Availability of Meeting Materials: The Agency document, *PM Light Extinction Measurements for a Possible Secondary PM NAAQS,* will be posted on the EPA Technology Transfer Network Web site on the respective page for Ambient Monitoring Technology Information Center at *http://www.epa.gov/ttn/amtic/casacinf.html.* Prior to the meetings, the agendas and other materials for these CASAC meetings will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/casac/.*

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for consideration on the topics included in this advisory activity. *Oral Statements:* To be placed on the public speaker list for the

February 24–25, 2010 meeting, interested parties should notify Ms. Kyndall Barry, DFO, by e-mail no later than February 12, 2009. To be placed on the public speaker list for the March 26, 2010 teleconference, interested parties should notify Dr. Holly Stallworth, DFO, by e-mail no later than March 15, 2010. Individuals making oral statements will be limited to five minutes per speaker. *Written Statements:* Written statements for the February 24–25, 2010 meeting should be received in the SAB Staff Office by

February 12, 2010, so that the information may be made available to the CASAC Panel for its consideration prior to this meeting. Written statements for the March 26, 2010 meeting should be received in the SAB Staff Office by March 12, 2010. Written statements should be supplied to the appropriate DFO in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with *and* without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Ms. Barry at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 20, 2010.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–1466 Filed 1–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9106–7]

Science Advisory Board Staff Office; Notification of a Public Meeting of the Air Quality Modeling Subcommittee Advisory Council on Clean Air Compliance Analysis (Council)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the Air Quality Modeling Subcommittee (AQMS) of the Advisory Council on Clean Air Compliance Analysis (Council). The AQMS, supplemented with additional members from the Council, will review air quality modeling results for scenarios with and without EPA's regulatory programs implemented under the Clean Air Act Amendments of 1990. The air quality modeling work has been developed in support of the Office of Air and Radiation's Second Section 812 Prospective Analysis of the benefits and costs of the Clean Air Act.

DATES: The meeting date is Friday, February 19, 2010, beginning at 8:30 a.m. and ending no later than 5 p.m. (Eastern Time).

ADDRESSES: The public meeting will be held in the Science Advisory Board Conference Center, 1025 F Street, NW., Suite 3705, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information about this meeting may contact Ms. Stephanie Sanzone, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone/voice mail: (202) 343–9697 or at *sanzone.stephanie@epa.gov.* General information about the Council may be found on the Council Web site at *http://www.epa.gov/advisorycouncilcaa.*

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the Federal Advisory Committee Act, 5 U.S.C., App. 2 (FACA), notice is hereby given that the Air Quality Modeling Subcommittee (AQMS) of the Advisory Council on Clean Air Compliance Analysis (Council) will hold a public meeting to evaluate draft documents regarding air quality modeling and evaluation of modeling performance analyses to support the Second Prospective Section 812 Benefit-Cost Analysis of the Clean Air Act. The Council was established in 1991 pursuant to the Clean Air Act (CAA) Amendments of 1990 (see 42 U.S.C. 7612) to provide advice, information and recommendations on technical and economic aspects of analyses and reports EPA prepares on the impacts of the CAA on the public health, economy, and environment of the United States. The Council is a Federal Advisory Committee chartered under FACA. The AQMS will provide advice through the Council and will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Pursuant to Section 812 of the 1990 Clean Air Act Amendments (CAAA), EPA conducts periodic studies to assess benefits and costs of the EPA's regulatory actions under the Clean Air Act. The Council has provided advice on an EPA retrospective study

published in 1997 and an EPA prospective study completed in 1999. EPA initiated a second prospective study to evaluate the benefits and costs of EPA Clean Air programs for years 1990—2020. The Council has previously provided advice on the analytical blueprint for this study. EPA's Office of Air and Radiation (OAR) is now nearing completion of the analytical work for the second prospective study. At the February 19, 2010 meeting, the AQMS will review technical documents pertaining to modeling of air quality for seven emissions scenarios: a 1990 baseline simulation; and simulations for 2000, 2010 and 2020 with and without the CAAA. The analyses use the Community Multiscale Air Quality (CMAQ) model to simulate national and regional-scale (Western U.S. and Eastern U.S.) concentrations of ozone and fine particulates ($PM_{2.5}$).

OAR is requesting that the AQMS review the data choices, methodological choices for analyzing the data, and the overall validity and utility of the estimated changes in air quality conditions between the with-CAAA90 and without-CAAA90 scenarios. The following documents are provided to the AQMS: (1) *Second Prospective Analysis of Air Quality in the U.S. Air Quality Modeling. Draft Report,* September 30, 2008. Prepared by ICF International for James B. DeMocker, EPA Office of Policy Analysis and Review, and (2) *Evaluation of CMAQ Model Performance for the 812 Prospective II Study,* Memorandum from Sharon Douglas and Tom Myers, ICF International to Jim DeMocker, EPA Office of Policy Analysis and Review, November 24, 2009.

Technical Contacts: The Office of Air and Radiation technical contact for the Second Section 812 Benefit-Cost Analysis of the Clean Air Act is Mr. Jim DeMocker at (202) 564–1673 or *democker.jim@epa.gov*.

Availability of Meeting Materials: EPA draft documents provided to the AQMS are available at *http://www.epa.gov/oar/sect812/prospective2.html.*

The meeting agenda for February 19, 2010 and any background materials will be posted on the SAB Web site *(http://www.epa.gov/advisorycouncilcaa)* prior to the meeting.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the AQMS to consider on the topics of this advisory activity and/or the group conducting the activity. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public meeting will be limited to five minutes per speaker, with no more than one hour for all speakers. Interested parties should contact Ms. Sanzone at the contact information provided above by February 10, 2010, to be placed on the public speaker list for the February 19, 2010 meeting. *Written Statements:* Written statements should be received in the SAB Staff Office by February 10, 2010, so that the information may be made available to the AQMS for their consideration prior to the meeting. Written statements should be supplied to Ms. Sanzone in the following formats: One hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files). Submitters are asked to provide electronic versions of each document submitted with *and* without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Ms. Sanzone at (202) 343–9697, or via e-mail at *sanzone.stephanie@epa.gov,* preferably at least ten (10) days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 19, 2010.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–1465 Filed 1–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9106–6]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the T.H. Agriculture and Nutrition LLC former Superfund Site (THAN Site) in Fresno, California was executed by the Agency on November 24, 2009. The proposed settlement resolves an EPA claim under Section 107 of CERCLA against the following Respondents: T.H. Agriculture & Nutrition, LLC, Syngenta Crop Protection, Inc., and Olin Corporation. The proposed settlement was entered into under the authority granted EPA in Section 122(h) of CERCLA, and requires the Respondents to pay $600,000.00 to the Hazardous Substances Superfund in settlement of past costs. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at: U.S. Environmental Protection Agency, Superfund Records Center, 95 Hawthorne Street, Suite 403S, San Francisco, CA 94105, Phone 415–536–2000.

DATES: Comments must be submitted on or before February 25, 2010.

ADDRESSES: The proposed settlement as set forth in the Administrative Consent Order, Docket No. 2009–12 is available for public inspection at the U.S. Environmental Protection Agency at U.S. Environmental Protection Agency, Superfund Records Center, 95 Hawthorne Street, Suite 403S, San Francisco, CA 94105, Phone 415–536–2000. A copy of the Administrative Settlement Agreement for Recovery of Past Costs may be obtained from the U.S. Environmental Protection Agency Region IX, Superfund Records Center at the above address. Comments regarding the proposed settlement should be addressed to Larry Bradfish at the address below, and should reference the THAN Site located in Fresno, California (EPA Docket No. 2009–12).

FOR FURTHER INFORMATION CONTACT: Larry Bradfish, Assistant Regional Counsel, Office of Regional Counsel (ORC–3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Phone 415–972–3934, E-*Mail: bradfish.larry@epa.gov.*

Dated: January 15, 2010.

Keith Takata,

Director, Superfund Division, Region 9.

[FR Doc. 2010–1463 Filed 1–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010-0014; FRL–8808–2]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by July 26, 2010 orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than July 26, 2010. Comments must be received on or before July 26, 2010.

ADDRESSES: Submit your comments and your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2010-0014, by one of the following methods:

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

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Written Withdrawal Request, Attention: Maia Tatinclaux, Pesticide Re-evaluation Division (7508P).

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010-0014. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Maia Tatinclaux, Office of Pesticide Programs (7508P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–0123; e-mail address: tatinclaux.maia@*epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, 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. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 56 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000004-00312	Houseplant Helper	Resmethrin
000004-00315	Bonide Liquid Rotenone Pyrethrins Spray	Pyrethrins Rotenone
000004-00337	Insect Fog	Resmethrin
000228-00243	Riverdale Cattle Spray	Pyrethrins PBO
000228-00245	Riverdale Insect Killer	Pyrethrins PBO
000228-00246	Riverdale Home and Garden Insect Spray	Pyrethrins PBO MGK 264
000228-00247	Riverdale Pyrethrin Concentrate	Pyrethrins PBO
000228-00250	Riverdale Patio & Yard Outdoor Fogger	Pyrethrins PBO
000279-03404	Intruder II	Pyrethrin PBO Cyfluthrin
000655-00079	Prentox 25% Malathion Dust Concentrate	Malathion
000655-00778	Prentox Resmethrin 3%	Resmethrin
000655-00779	Prentox Resmethrin 0.5% RTU	Resmethrin
000655-00787	Prentox Resmethrin EC3	Resmethrin
000703-00001	Buhach Insect Powder	Pyrethrins
000829-00075	SA-50 Brand 50% Malathion Wettable Spray	Malathion
001543-00008	Absorbine SuperShield II Fly Repellant	Resmethrin
001543-00009	Absorbine Concentrated Fly Repellant	Resmethrin
001769-00373	Danco Concentrate	PBO Pyrethrins MGK 264
002517-00028	Geisler No Mite Spray	PBO Pyrethrins MGk 264
002517-00047	Sergeant's Skip-Flea Shampoo for Dogs	PBO
002517-00055	Sergeant's Rug Patrol Carpet Insecticide and Freshener Formula B	PBO
002517-00069	Sergeant's Multipurpose Flea & Tick Killer I	PBO Pyrethrins Permethrin
002517-00072	Sergeant's Flea & Tick Powder with Pyrethrins	PBO Pyrethrins Permethrin
002517-00073	Sergeant's Flea & Tick Powder with Permethrin	PBO Permethrin
002517-00075	Sergeants X-term Fogger with Nylar	Pyrethrin Permethrin MGK-264 Pyriproxifen

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
002517-00079	SPI # 8325	PBO Permethrin
002517-00106	Ultra-Sect IGR Flea & Tick Mist	PBO Pyrethrins MGk 264
002517-00121	Zema Flea & Tick Dip	PBO Pyrethrins
003862-00080	Terminator	Resmethrin
004822-00145	Johnson Yard Master Foam Vegetable Garden Insect Killer	Pyrethrins
004822-00155	Product 29 Garden Insect Killer	Pyrethrins
004822-00311	Pyrethrum Extract 25	Pyrethrins
004822-00460	Whitmire Residual Flea and Tick Spray for Dogs and Cats	Pyrethrins Permethrin
004822-00461	Whitmire Residual Pressurized Flea and Tick Spray	Pyrethrins Permethrin
007405-00070	Chemi-Cap Total Release Insect Fogger	Pyrethrins MGK-264 Permethrin
007461-00002	Bug Stomper 4-3	Resmethrin
008536-00033	Thermal Fogging Insecticide Type M	PBO Pyrethrins MGK-264
008536-00036	Cardinal 25-5 Insecticide	Pyrethrins Piperonyl Butoxide
008536-00037	Cardinal Food Plant Concentrate Fogging Insecticide	PBO Pyrethrins
008536-00038	Cardinal 1-2-3 Insecticide	Pyrethrins Piperonyl Butoxide MGK-264
008536-00039	Cardinal 3-6-10 Insecticide	PBO Pyrethrins MGK-264
008660-00254	Permethrin 0.5 Lawn Insect Control with Fertilizer	Permethrin
009816-00003	Fiebing's Equilfend Flyspray for Horses	PBO Pyrethrins Permethrin
010772-00011	Ear-Rite Insecticidal Ear Wash for Dogs	PBO Pyrethrins
010772-00016	Lambert Kay Scented Flea and Tick Shampoo for Dogs, Cats and Ferrets	PBO Pyrethrins
010806-00011	P-30 Insect Spray	Pyrethrins Piperonyl Butoxide MGK-264
013799-00017	Four Paws Flea and Tick Soap	PBO Pyrethrins MGK 264

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
013799-00022	Four Paws Mite & Lice Bird & Cage Spray	PBO Pyrethrins
013799-00025	Four Paws Magic Coat Super Plus	PBO Pyrethrins MGK 264
035138-00074	Aero Permethrin 25	Permethrin
040208-00005	Haymaker II Fogging Insecticide	PBO Pyrethrins
040391-00004	Resmethrin Insect Spray	Resmethrin
040391-00005	Auto Fog-5	Resmethrin
040391-00011	Auto Fog-10	Resmethrin
040391-00012	Auto Fog-30	Resmethrin
066330-00220	Malathion 5EC	Malathion

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company Number	Company Name and Address
4	Bonide Products, Inc. Agent Registrations By Design, Inc. P.O. Box 1019 Salem, VA 24153-3805
228	Nufarm Americas INC 150 Harvester Dr, Suite 200 Burr Ridge, IL 60527
279	FMC Corp. Agricultural Products Group 1735 Market St, RM 1978 Philadelphia, PA 19103
655	Prentiss, INC. 3600 Mansell Rd, Suite 350 Alpharetta, Georgia 30022
703	Buhach Company 14336 SE 84 CT Newcastle, WA 98059
829	Southern Agricultural Insecticides, Inc. P.O. Box 218 Palmetto, FL 34220
1543	W.F. Young, Inc. 302 Benton Drive East Longmeadow, MA 01028
1769	NCH Corp. M 2727 Chemsearch Blvd. Irving, Texas 75062
2517	Sergeant's Pet Care Products, Inc. 2625 South 158th Plaza Omaha, Nebraska 68130-1703

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company Number	Company Name and Address
3862	ABC Compounding Co, Inc. P.O. Box 16247 Atlanta, Georgia 30321
4822	S.C. Johnson & Son, Inc. 1525 Howe St. Racine, Wisconsin 53403
7405	CP Aeroscience, INC. P.O. BOX 667770 Pompano Beach, FL 33066
7461	The Bug Stomper of LA, INC. P.O. Box 704 Springhill, LA 71075
8536	Soil Chemicals Corporation P.O. Box 782 Hollister, California 95024
8660	United Industries Corp. D/B/A Sylorr Plant Corp P.O. Box 14642 St. Louis, MO 63114-0642
9816	Fiebing Company, INC. P.O. Box 694 Milwaukee, Wisconsin 53201-0694
10772	Church & Dwight CO INC 469 North Harrison St Princeton, New Jersey 08543-5297
10806	Contact Industries, Div. of Safeguard Chemical Corp. 411 Wales Avenue Bronx, NY 10454
13799	Four Paws Products LTD 50 Wireless Boulevard Hauppauge, New York 11788
35138	Aero Chem 1396 Lee Lane Raymond, MS 39154
40208	Lawson Products, Inc. D/B/A Drummond, A Lawson Brand 600 Corporate Woods Parkway Vernon Hills, Illinois 60061-3165
40391	Entech Systems Corporation 509 Tower Valley Drive Hillsboro, Missouri 63050
66330	Arysta Lifescience North America, LLC. 155401 Weston Parkway, Suite 150 Cary, NC 27513

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before July 26, 2010. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration

fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. EPA's existing stocks policy (56 FR 29362, June 26, 1991) provides that: "If a registrant requests to voluntarily cancel a registration where the Agency has identified no particular risk concerns, the registrant has complied with all applicable conditions of reregistration, conditional registration, and data call ins, and the registration is not subject to a Registration Standard, Label Improvement Program, or reregistration decision, the Agency will generally permit a registrant to sell or distribute existing stocks for 1 year after the cancellation request was received. Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted."

Upon cancellation of the pesticides identified in Table 1, EPA anticipates allowing sale, distribution and use as described above. Exception to this general policy will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 14, 2010

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–1476 Filed 1–25–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

January 21, 2010.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

DATES: Persons wishing to comments on this information collection should submit comments on or before March 29, 2010. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at Nicholas_A._Fraser@omb.eop.gov and to Judith B. Herman, Federal Communications Commission (FCC). To submit your PRA comments by e–mail send them to: PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, OMD, 202–418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0295.

Title: Section 90.607(a)(1) and (b)(1), Supplemental Information To Be Furnished By Applicants For Facilities Under Subpart S.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit; not–for–profit institutions, and state, local or tribal government.

Number of Respondents: 3,788 respondents; 3,788 responses.

Estimated Time Per Response: .25 hours.

Frequency of Response: One time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 947 hours.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: No questions of a confidential nature are asked.

Need and Uses: The Commission is submitting this information collection to the Office of Management and Budget (OMB) after this comment period in order to obtain the full three year clearance. There is a reduction in the number of respondents/responses and therefore, the total annual burden hours have been reduced.

This rule section requires the affected applicants to submit a list of any radio facilities they hold within 40 miles of the base station transmitter site being applied for. This information is used to determine if an applicant's proposed system is necessary in light of communications facilities it already owns. Such a determination helps the Commission to equitably distribute limited spectrum and prevents spectrum warehousing. The information is collected only once – upon initial license application.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2010–1459 Filed 1–25–10; 8:45 am]

BILLING CODE 6712–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0505]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Recordkeeping and Reporting Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing, Material From Cattle

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the

Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 25, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0597. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Recordkeeping and Reporting Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing, Material From Cattle—21 CFR 189.5(c) and 700.27(c) (OMB Control Number 0910–0597)—Extension

Sections 189.5(c) and 700.27(c) of FDA's regulations (21 CFR 189.5(c) and 700.27(c)) set forth the requirements for recordkeeping and records access for FDA-regulated human food, including dietary supplements, and cosmetics that are manufactured from, processed with, or otherwise contain, material derived from cattle. FDA issued these recordkeeping regulations under the adulteration provisions in sections 402(a)(2)(C), (a)(3), (a)(4), (a)(5), 601(c), and under section 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(2)(C), (a)(3), (a)(4), (a)(5), 361(c), and 371(a)). Under section 701(a) of the act, FDA is authorized to issue regulations for the act's efficient enforcement. With regard to records concerning imported human food and cosmetics, FDA relied on its authority under sections 801(a) and 701(b) of the act (21 U.S.C. 381(a) and 371(b)). Section 801(a) of the act provides requirements with regard to imported food and cosmetics and provides for refusal of admission into the United States of human food and cosmetics that appear to be adulterated. Section 701(b) of the act authorizes the Secretaries of Treasury and Health and Human Services to jointly prescribe regulations for the efficient enforcement of section 801 of the act.

These requirements are necessary because, once materials are separated from an animal, it may not be possible without records to know the following: (1) Whether cattle material may contain specified risk materials (SRMs). SRMs include brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae and the wings of the sacrum), and dorsal root ganglia from animals less than 30 months old and tonsils and distal ileum of the small intestine from all animals of all ages; (2) whether the source animal for cattle material was inspected and passed; (3) whether the source animal for cattle material was nonambulatory disabled or mechanically separated beef; and (4) whether tallow in a human food or cosmetic contains less than 0.15 percent insoluble impurities.

These regulations implement recordkeeping for the provisions of FDA's interim final rule entitled "Use of Materials Derived From Cattle in Human Food and Cosmetics" (the IFR) (69 FR 42256, July 14, 2004). FDA's regulations in §§ 189.5(c) and 700.27(c) require that manufacturers and processors of human food and cosmetics that are manufactured from, processed with, or otherwise contain, material from cattle establish and maintain records sufficient to demonstrate that the human food or cosmetic is not manufactured from, processed with, or does not otherwise contain, prohibited cattle materials. These records must be retained for 2 years at the manufacturing or processing establishment or at a reasonably accessible location. Maintenance of electronic records is acceptable and electronic records are considered to be reasonably accessible if they are accessible from an onsite location. Records required by §§ 189.5(c) and 700.27(c) and existing records relevant to compliance with these sections must be available to FDA for inspection and copying. Existing records may be used if they contain all of the required information and are retained for the required time period.

Because we do not easily have access to records maintained at foreign establishments, FDA regulations in §§ 189.5(c)(6) and 700.27(c)(6), respectively, require that when filing for entry with U.S. Customs and Border Protection, the importer of record of a human food or cosmetic manufactured from, processed with, or otherwise containing, cattle material must affirm that the human food or cosmetic was manufactured from, processed with, or otherwise contains, cattle material and must affirm that the human food or cosmetic was manufactured in accordance with the applicable requirements of §§ 189.5 or 700.27. In addition, if a human food or cosmetic is manufactured from, processed with, or otherwise contains, cattle material, then the importer of record must, if requested, provide within 5 business days records sufficient to demonstrate that the human food or cosmetic is not manufactured from, processed with, or does not otherwise contain, prohibited cattle material.

In the **Federal Register** of October 23, 2009 (74 FR 54827), FDA published a 60-day notice requesting public comment. No comments were received.

FDA estimates the burden of this collection of information as follows:

This estimate is based on FDA's estimate of the number of facilities affected by the final rule published in the **Federal Register** of October 11, 2006 (71 FR 59653 at 59667), entitled "Recordkeeping Requirements for Human Food and Cosmetics Manufactured From, Processed With, or Otherwise Containing, Material From Cattle."

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
Domestic Facilities 189.5(c) and 700.27(c)	697	52	36,244	0.25	9,061
Foreign Facilities 189.5(c) and 700.27(c)	916	52	47,632	0.25	11,908

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
Total					20,969

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that there are 697 domestic facility relationships (71 FR 59653 at 59667), and 916 foreign facility relationships (71 FR 59653 at 59663), consisting of the following facilities: An input supplier of cattle-derived materials that requires records (the upstream facility) and a purchaser of cattle-derived materials requiring documentation—this may be a human food or cosmetic manufacturer or processor. The recordkeeping burden of FDA's regulations in §§ 189.5(c) and 700.27(c) is the burden of sending, verifying, and storing documents regarding shipments of cattle material that is to be used in human food and cosmetics. In this estimate of the recordkeeping burden, we treat these recordkeeping activities as shared activities between the upstream and downstream facilities. It is in the best interests of both facilities in the relationship to share the burden necessary to comply with the regulations; therefore, we estimate the time burden of developing these records as a joint task between the two facilities. Thus, we estimate that this recordkeeping burden will be about 15 minutes per week, or 13 hours per year (71 FR 59653 at 59667), and we assume that the recordkeeping burden will be shared between two entities (i.e., the ingredient supplier and the manufacturer of finished products). Therefore, the total recordkeeping burden for domestic facilities is estimated to be 13 hours x 697 = 9,061 hours, and the total recordkeeping burden for foreign facilities is estimated to be 13 hours x 916 = 11,908 hours, as shown in Table 1 of this document.

TABLE 2.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
189.5(c)(6) and 700.27(c)(6)	54,825	1	54,825	0.033	1,809

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's regulations in §§ 189.5(c)(6) and 700.27(c)(6) impose a reporting burden on importers of human food and cosmetics that are manufactured from, processed with, or otherwise contain, cattle material. Importers of these products must affirm that the food or cosmetic is manufactured from, processed with, or does not otherwise contain, prohibited cattle materials and must affirm that the human food or cosmetic was manufactured in accordance with the applicable requirements of §§ 189.5 or 700.27. The affirmation is made by the importer of record to FDA through the agency's Operational and Administrative System for Import Support (OASIS). Affirmation by importers is expected to take approximately 2 minutes per entry line. Table 2 of this document shows that 54,825 lines of food and cosmetics that likely contain cattle materials are imported annually (71 FR 59653 at 59667). The annual reporting burden of affirming whether import entry lines contain cattle-derived materials is estimated to take 1,809 hours annually (54,825 lines x 2 minutes per line).

Dated: January 20, 2010.

David Dorsey

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–1436 Filed 1–25–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0221]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food Labeling; Notification Procedures for Statements on Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 25, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0331. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Labeling; Notification Procedures for Statements on Dietary Supplements—21 CFR 101.93 (OMB Control Number 0910–0331—Extension)

Section 403(r)(6) of the act (21 U.S.C. 343(r)(6)) requires that the agency be notified by manufacturers, packers, and distributors of dietary supplements that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in

section 403(r)(6) of the act. Section 403(r)(6) of the act requires that the agency be notified, with a submission about such statements, no later than 30 days after the first marketing of the dietary supplement. Information that is required in the submission includes the following items: (1) The name and address of the manufacturer, packer, or distributor of the dietary supplement product; (2) the text of the statement that is being made; (3) the name of the dietary ingredient or supplement that is the subject of the statement; (4) the name of the dietary supplement (including the brand name); and (5) a signature of a responsible individual who can certify the accuracy of the information presented, and who must certify that the information contained in the notice is complete and accurate, and that the notifying firm has substantiation that the statement is truthful and not misleading.

The agency established § 101.93 (21 CFR 101.93) as the procedural regulation for this program. Section 101.93 provides details of the procedures associated with the submission and identifies the information that must be included in order to meet the requirements of section 403 of the act.

In the **Federal Register** of June 2, 2009 (74 FR 26406), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received two letters in response, each containing one or more comments. One of these letters was received several months after the close of the comment period. The comments that were timely filed were outside the scope of the comment request.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
101.93	2,200	1	2,200	0.75	1,650

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency believes that there will be minimal burden on the industry to generate information to meet the requirements of section 403 of the act in submitting information regarding section 403(r)(6) statements on labels or in labeling of dietary supplements. The agency is requesting only information that is immediately available to the manufacturer, packer, or distributor of the dietary supplement that bears such a statement on its label or in its labeling. FDA estimates that, each year, approximately 2,200 firms will submit the information required by section 403 of the act. We estimate that a firm will require 0.75 hours to gather the information needed and prepare a communication to FDA, for a total of 1,650 hours (2,200 x 0.75). This estimate is based on the average number of notification submissions received by the agency in the preceding 2 years.

Dated: January 20, 2010.

David Dorsey

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–1435 Filed 1–25–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Next Series of Tobacco Use Supplements to the Current Population Survey (TUS–CPS) (NCI)

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 6, 2009, (Vol. 74, No. 214, pp. 57496–97) and allowed 60 days for public comment. One request for information was received on November 6, 2009. A copy of the 2010–2011 TUS–CPS was e-mailed to the requestor reiterating our data collection plans as stated in the 60-day **Federal Register** Notice. Another comment was received on December 16, 2009 complimenting our inclusion in the 2010–2011 TUS–CPS of critically needed information on details about the types of cigars (especially small cigars) used by smokers and new and valuable information on menthol cigarette smoking. We thanked the requestor for the endorsement and agreed that we thought that was valuable and timely as well and that is why we have included the information in the proposed data collection. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Next Series of Tobacco Use Supplements to the Current Population Survey (TUS–CPS) (NCI). *Type of information request:* REINSTATEMENT WITH CHANGE of OMB #0925–0368, Expiration 4/30/2009. *Need and Use of Information Collection:* The 2010–2011 Tobacco Use Supplement to the Current Population Survey conducted by the Census Bureau will collect data from the U.S. civilian non-institutionalized population on smoking, other tobacco use, and attempts at cessation; policy information such as home and workplace smoking policies; health professional advice to stop smoking; and changes in smoking norms and attitudes. The TUS–CPS will be and has been in the past a key source of national, State, and some local-level data on these topics in U.S. households because it uses a large, nationally representative sample. This survey is part of a continuing series of surveys (OMB #0925–0368) that were sponsored by NCI and has been administered triennially as part of the U.S. Census Bureau's and the Bureau of Labor Statistics CPS. The TUS–CPS has been fielded since 1992, most recently in 2006–07, and its data are available for public use. Government agencies, other researchers and the public can use the data to monitor progress in the control

of tobacco use, conduct tobacco-related research, evaluate tobacco control programs, examine tobacco-use-related health disparities, and use this data to help determine policies and services that need to be provided. A unique feature is the ability to link other social and economic Census Bureau and Bureau of Labor Statistics data and other sponsor-supported supplement data to the TUS–CPS data. Much of this data can also be linked to cancer and other cause-specific mortality data through the National Longitudinal Mortality Study (co-sponsored by three NIH agencies, the National Center for Health Statistics/Centers for Disease Control and Prevention (CDC), and the Census Bureau). This survey has in the past and the 2010–2011 survey will provide in the future invaluable information to measure progress toward tobacco control as part of the NCI's Cancer Trend Progress Report, and the Department of Health and Human Services' Healthy People 2010 and 2020 Goals. This data will also provide a basis for the National Human Genome Research Institute's PhenX Alcohol, Tobacco, and Other Substances Toolkit, provide long-term trend data for CDC and other State and local public health staff, and support the research of extramural scientists. The 2010–2011 TUS–CPS is also relevant to several NCI tobacco control initiatives. The main 2010–2011 survey will allow State and sub-State-specific estimates to be made as do all the previous surveys. The May 2011 Follow-Up questionnaire will consist of an abbreviated version of the main 2010–2011 questionnaire. Data will be collected in May 2010, August 2010, January 2011, and May 2011 from approximately 315,000 respondents (270,000 unique respondents, 45,000 of these in the May 2011 Follow-Up). The 2010–2011 TUS–CPS, complemented by the Follow-Up questionnaire, will be useful for researchers interested in measuring the impact on tobacco cessation of new FDA regulation (the Family Smoking Prevention and Tobacco Control Act) as it is implemented, and will complement Federal tobacco research and policy efforts. *Frequency of Response:* One-time study for the main 2010–2011 survey; One-time study for the May 2011 Follow-Up. *Affected Public:* Individuals or households. *Type of Respondents:* Persons 18 years of age or older. The annualized cost to respondents is estimated at $285,000. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report. The annual reporting burden is presented in the table below.

TABLE—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondent per survey period	Number of respondents (annualized)	Responses per respondent	Average time per response (minutes/hour)	Annual burden hours
May 2010: Individuals	30,000	1	9/60 (0.15)	4,500
August 2010: Individuals	30,000	1	9/60 (0.15)	4,500
January 2011: Individuals	30,000	1	9/60 (0.15)	4,500
May 2011 Follow-Up: Individuals	15,000	1	6/60 (0.10)	1,500
Totals	105,000			15,000

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Anne Hartman, M.S., M.A., Health Statistician, National Cancer Institute, 6130 Executive Blvd—MSC 7344, Executive Plaza North, Suite 4005, Bethesda, Maryland 20892–7344, or call non-toll free (301) 496–4970, or FAX your request to (301) 435–3710, or e-mail your request, including your address, to *ah42t@nih.gov* or *hartmana@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: January 15, 2010.

Kristine Miller,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2010–1425 Filed 1–25–10; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0019]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, Postmarketing Studies Status Reports, and Forms FDA 356h and 2567

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for

public comment in response to the notice. This notice solicits comments on the collection of information relating to general licensing provisions for biologics license applications (BLAs), changes to an approved application, labeling, revocation and suspension, postmarketing studies status reports, and Forms FDA 356h and 2567.

DATES: Submit written or electronic comments on the collection of information by March 29, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3792.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension, Postmarketing Studies Status Reports, and Forms FDA 356h and 2567 (OMB Control Number 0910–0338)—Extension

Under section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262), manufacturers of biological products must submit a license application for FDA review and approval before marketing a biological product in interstate commerce. Licenses may be issued only upon showing that the establishment and the products for which a license is desired meets standards prescribed in regulations designed to ensure the continued safety, purity, and potency of such products. All such licenses are issued, suspended, and revoked as prescribed by regulations in part 601 (21 CFR part 601).

Section 130(a) of the Food and Drug Administration Modernization Act (Public Law 105–115) amended the Federal Food, Drug, and Cosmetic Act (the act) by adding a new provision (section 506B of the act (21 U.S.C. 356b)) requiring reports of postmarketing studies for approved human drugs and licensed biological products. Section 506B of the act provides FDA with additional authority to monitor the progress of postmarketing studies that applicants have made a commitment to conduct and requires the agency to make publicly available information that pertains to the status of these studies. Under section 506B(a) of the act, applicants that have committed to conduct a postmarketing study for an approved human drug or licensed biological product must submit to FDA a status report of the progress of the study or the reasons for the failure of the applicant to conduct the study. This report must be submitted within 1 year after the U.S. approval of the application and then annually until the study is completed or terminated.

A summary of additional collection of information requirements follows:

Section 601.2(a) requires a manufacturer of a biological product to submit an application on forms prescribed for such purposes with accompanying data and information, including certain labeling information, to FDA for approval to market a product in interstate commerce. The container and package labeling requirements are provided under §§ 610.60 through 610.65 (21 CFR 610.60 through 610.65). The estimate for these regulations is included in the estimate under § 601.2(a) in table 1 of this document.

Section 601.5(a) requires a manufacturer to submit to FDA notice of its intention to discontinue manufacture of a product or all products. Section 601.6(a) requires the manufacturer to notify selling agents and distributors upon suspension of its license, and provide FDA of such notification.

Section 601.12(a)(2) requires, generally, that the holder of an approved BLA must assess the effects of a manufacturing change before distributing a biological product made with the change. Section 601.12(a)(4) requires, generally, that the applicant must promptly revise all promotional labeling and advertising to make it consistent with any labeling changes implemented. Section 601.12(a)(5) requires the applicant to include a list of all changes contained in the supplement or annual report; for supplements, this list must be provided in the cover letter. The burden estimates for § 601.12(a)(2) are included in the estimates for supplements (§ 601.12(b) and (c)) and annual reports (§ 601.12(d)). The burden estimates for § 601.12(a)(4) are included in the estimates under § 601.12(f)(4) in table 1 of this document.

Section 601.12(b)(1), (b)(3), (c)(1), (c)(3), (c)(5), (d)(1), and (d)(3) requires applicants to follow specific procedures to submit information to FDA of any changes, in the product, production process, quality controls, equipment, facilities, or responsible personnel established in an approved license application. The appropriate procedure depends on the potential for the change to have a substantial, moderate, or minimal adverse effect on the identity, strength, quality, purity, or potency of the products as they may relate to the safety or effectiveness of the product. Under § 601.12(b)(4), an applicant may ask FDA to expedite its review of a supplement for public health reasons or if a delay in making the change described in it would impose an extraordinary hardship of the applicant. The burden estimate for § 601.12(b)(4) is minimal and included in the estimate under § 601.12(b)(1) and (b)(3) in table 1 of this document.

Section 601.12(e) requires applicants to submit a protocol, or change to a protocol, as a supplement requiring FDA approval before distributing the product. Section 601.12(f)(1), (f)(2), and (f)(3) requires applicants to follow specific procedures to report certain

labeling changes to FDA. Section 601.12(f)(4) requires applicants to report to FDA advertising and promotional labeling and any changes.

Under § 601.14, the content of labeling required in 21 CFR 201.100(d)(3) must be in electronic format and in a form that FDA can process, review, and archive. This requirement is in addition to the provisions of §§ 601.2(a) and 601.12(f). The burden estimate for § 601.14 is minimal and included in the estimate under §§ 601.2(a) (BLAs) and 601.12(f)(1), (f)(2), and (f)(3) (labeling supplements and annual reports) in table 1 of this document.

Section 601.45 requires applicants of biological products for serious or life-threatening illnesses to submit to the agency for consideration, during the pre-approval review period, copies of all promotional materials, including promotional labeling as well as advertisements.

In addition to §§ 601.2 and 601.12, there are other regulations in parts 640, 660, and 680 (21 CFR parts 640, 660, and 680) that relate to information to be submitted in a license application or supplement for certain blood or allergenic products as follows: §§ 640.6, 640.17, 640.21(c), 640.22(c), 640.25(c), 640.56(c), 640.64(c), 640.74(a) and (b)(2), 660.51(a)(4), and 680.1(b)(2)(iii) and (d). In table 1 of this document, the burden associated with the information collection requirements in these regulations is included in the burden estimate for §§ 601.2 and/or 601.12. A regulation may be listed under more than one paragraph of § 601.12 due to the type of category under which a change to an approved application may be submitted.

There are also additional container and/or package labeling requirements for certain licensed biological products including: § 640.70(a) for Source Plasma; § 640.74(b)(3) and (4) for Source Plasma Liquid; § 640.84(a) and (c) for Albumin; § 640.94(a) for Plasma Protein Fraction; § 660.2(c) for Antibody to Hepatitis B Surface Antigen; § 660.28(a), (b), and (c) for Blood Grouping Reagent; § 660.35(a), (c) through (g), and (i) through (m) for Reagent Red Blood Cells; § 660.45 for Hepatitis B Surface Antigen; and § 660.55(a) and (b) for Anti-Human Globulin. The burden associated with the additional labeling requirements for submission of a license application for these certain biological products is minimal because the majority of the burden is associated with the requirements under §§ 610.60 through 610.65 or § 809.10 (21 CFR 809.10). Therefore, the burden estimates for these regulations are included in the estimate under §§ 610.60 through 610.65 in table 1 of this document. The burden estimates associated with § 809.10 are approved under OMB Control No. 0910–0485.

Section 601.25(b) requests interested persons to submit, for review and evaluation by an advisory review panel, published and unpublished data and information pertinent to a designated category of biological products that have been licensed prior to July 1, 1972. Section 601.26(f) requires that licensees submit to FDA a written statement intended to show that studies adequate and appropriate to resolve the questions raised about a biological product have been undertaken for a product if designated as requiring further study under the reclassification procedures. Under § 601.25(b), FDA estimates no PRA burden for this regulation, and therefore this regulation is not included in table 1 of this document. Under section 601.26(f), FDA estimates no burden for this regulation since there are no products designated to require further study and none are predicted in the future. However, FDA is using an estimate of one for calculation purposes. Based on the possible reclassification of a product, the labeling for the product may need to be revised, or a manufacturer, on its own initiative, may deem it necessary for further study. As a result, any changes to product labeling would be reported under the appropriate paragraph of § 601.12.

Section 601.27(a) requires that applications for new biological products contain data that are adequate to assess the safety and effectiveness of the biological product for the claimed indications in pediatric subpopulations, and to support dosing and administration information. Section 601.27(b) provides that an applicant may request a deferred submission of some or all assessments of safety and effectiveness required under §601.27(a) until after licensing the product for use in adults. Section 601.27(c) provides that an applicant may request a full or partial waiver of the requirements under § 601.27(a) with adequate justification. The burden estimates for § 601.27(a) are included in the burden estimate under § 601.2(a) in table 1 of this document since these regulations deal with information to be provided in an application.

Section 601.28 requires sponsors of licensed biological products to submit the information in § 601.28(a), (b), and (c) to the Center for Biologics Evaluation and Research (CBER) or the Center for Drug Evaluation and Research (CDER) each year, within 60 days of the anniversary date of approval of the license. Section 601.28(a) requires sponsors to submit to FDA a brief summary stating whether labeling supplements for pediatric use have been submitted and whether new studies in the pediatric population to support appropriate labeling for the pediatric population have been initiated. Section 601.28(b) requires sponsors to submit to FDA an analysis of available safety and efficacy data in the pediatric population and changes proposed in the labeling based on this information. Section 601.28(c) requires sponsors to submit to FDA a statement on the current status of any postmarketing studies in the pediatric population performed by, on or behalf of, the applicant. If the postmarketing studies were required or agreed to, the status of these studies is to be reported under § 601.70 rather then under this section.

Sections 601.33 through 601.35 clarify the information to be submitted in an application to FDA to evaluate the safety and effectiveness of in vivo radiopharmaceuticals. The burden estimates for §§ 601.33 through 601.35 are included in the burden estimate under § 601.2(a) in table 1 of this document since these regulations deal with information to be provided in an application.

Section 601.70(b) requires each applicant of a licensed biological product to submit annually a report to FDA on the status of postmarketing studies for each approved product application. Each annual postmarketing status report must be accompanied by a completed transmittal Form FDA 2252 (Form FDA 2252 approved under OMB Control No. 0910–0001). Under § 601.70(d), two copies of the annual report shall be submitted to FDA.

Sections 601.91 through 601.94 concerns biological products for which human efficacy studies are not ethical or feasible. Section 601.91(b)(3) requires applicants to prepare and provide labeling with relevant information to patients or potential patients for biological products approved under part 601, subpart H when human efficacy studies are not ethical or feasible (or based on evidence of effectiveness from studies in animals). Section 601.93 provides that biological products approved under subpart H are subject to the postmarketing recordkeeping and safety reporting applicable to all approved biological products. Section 601.94 requires applicants under subpart H to submit to the agency for consideration during preapproval review period copies of all promotional materials including promotional labeling as well as advertisements.

Under § 601.93, any potential postmarketing reports and/or recordkeeping burdens would be included under the adverse experience reporting (AER) requirements under part 600 (21 CFR part 600) (OMB Control No. 0910–0308). Therefore, any burdens associated with these requirements would be reported under the AER information collection requirements (OMB Control No. 0910–0308).

Section 610.9(a) requires the applicant to present certain information, in the form of a license application or supplement to the application, for a modification of any particular test method or manufacturing process or the conditions which it is conducted under the biologics regulations. The burden estimate for § 610.9(a) is included in the estimate under §§ 601.2(a) and 601.12(b) and (c) in table 1 of this document.

Section 610.11(g)(2) provides that a manufacturer of certain biological products may request an exemption from the general safety test (GST) requirements contained in subpart H. Under § 610.11(g)(2), FDA requires only those manufacturers of biological products requesting an exemption from the GST to submit additional information as part of a license application or supplement to an approved license application. Therefore, the burden estimate for § 610.11(g)(2) is included in the estimate under §§ 601.2(a) and 601.12(b) in table 1 of this document.

Section 640.120 requires licensed establishments to submit a request for an exception or alternative to any requirement in the biologics regulations regarding blood, blood components, or blood products. A request for an exception or alternative must be submitted in accordance with § 601.12; therefore the burden estimate for § 640.120 is included in the estimate under § 601.12(b) in table 1 of this document.

Section 680.1(c) requires manufacturers to update annually their license file with the list of source materials and the suppliers of the materials. Section 680.1(b)(3)(iv) requires manufacturers to notify FDA when certain diseases are detected in source materials.

Sections 600.15(b) and 610.53(d) (21 CFR 610.53(d)) require the submission of a request for an exemption or modification regarding the temperature requirements during shipment and from dating periods, respectively, for certain biological products. Section 606.110(b) (21 CFR 606.110(b)) requires the submission of a request for approval to perform plasmapheresis of donors who do not meet certain donor requirements for the collection of plasma containing rare antibodies. Under §§ 600.15(b), 610.53(d), and 606.110(b), a request for an exemption or modification to the requirements would be submitted as a supplement. Therefore, the burden hours for any submissions under §§ 600.15(b), 610.53(d), and 606.110(b) are included in the estimates under § 601.12(b) in table 1 of this document.

In July 1997, FDA revised Form FDA 356h "Application to Market a New Drug, Biologic, or an Antibiotic Drug for Human Use" to harmonize application procedures between CBER and CDER. The application form serves primarily as a checklist for firms to gather and submit certain information to FDA. The checklist helps to ensure that the application is complete and contains all the necessary information, so that delays due to lack of information may be eliminated. The form provides key information to FDA for efficient handling and distribution to the appropriate staff for review. The estimated burden hours for nonbiological product submissions to CDER using FDA Form 356h are approved under OMB Control No. 0910–0001.

Form FDA 2567 "Transmittal of Labels and Circulars" is used by manufacturers of licensed biological products to submit labeling (e.g., circulars, package labels, container labels, etc.) and labeling changes for FDA review and approval. The labeling information is submitted with the form for license applications, supplements, or as part of an annual report. Form FDA 2567 is also used for the transmission of advertisements and promotional labeling. Form FDA 2567 serves as an easy guide to assure that the manufacturer has provided the information required for expeditious handling of their labeling by CBER. For advertisements and promotional labeling, manufacturers of licensed biological products may submit to CBER either Form FDA 2567 or 2253. Form FDA 2253 was previously used only by drug manufacturers regulated by CDER. In August of 1998, FDA revised and harmonized Form FDA 2253 so the form may be used to transmit specimens of promotional labeling and advertisements for biological products as well as for prescription drugs and antibiotics. The revised, harmonized form updates the information about the types of promotional materials and the codes that are used to clarify the type of advertisement or labeling submitted; clarifies the intended audience for the advertisements or promotional labeling (e.g., consumers, professionals, news services); and helps ensure that the submission is complete. Form FDA 2253 is approved under OMB Control No. 0910–0001.

Under table 1 of this document, the number of respondents is based on the estimated annual number of manufacturers that submitted the required information to FDA or the number of submissions FDA received in fiscal year 2008. Based on information obtained from FDA's database systems, there are an estimated 301 licensed biologics manufacturers. The total annual responses are based on the estimated number of submissions (i.e., license applications, labeling and other supplements, protocols, advertising and promotional labeling, notifications) for a particular product received annually by FDA. Based on previous estimates, the rate of submissions is not expected to change significantly in the next few years. The hours per response are based on information provided by industry and past FDA experience with the various submissions or notifications. The hours per response include the time estimated to prepare the various submissions or notifications to FDA, and, as applicable, the time required to fill out the appropriate form and collate the documentation. Additional information regarding these estimates is provided in this document as necessary.

Under §§ 601.2 and 601.12, the estimated hours per response are based on the average number of hours to submit the various submissions. The estimated average number of hours is based on the range of hours to complete a very basic application or supplement and a complex application or supplement.

Under § 601.6(a), the total annual responses are based on FDA estimates that establishments may notify an average of 20 selling agents and distributors of such suspension, and provide FDA of such notification. The number of respondents is based on the estimated annual number of suspensions of a biologic license.

Under §§ 601.12(f)(4) and 601.45, manufacturers of biological products may use either Form FDA 2567 or Form FDA 2253 to submit advertising and promotional labeling. Based on information obtained from FDA's database system, there were an estimated 4,452 submissions of advertising and promotional labeling. FDA estimates that approximately 15 percent of those submissions were received with Form FDA 2567 and 85 percent were received with Form 2253.

Under §§ 601.28 and 601.70(b), FDA estimates that it takes an applicant approximately 24 hours (8 hours per study x 3 studies) annually to gather,

complete, and submit the appropriate information for each postmarketing status report (approximately two to four studies per report) and the accompanied transmittal Form FDA 2252. Included in these 24 hours is the time necessary to prepare and submit two copies of the annual progress report of postmarketing studies to FDA under § 601.70(d).

Under §§ 601.91 through 601.94, FDA expects to receive very few applications for these products; however, for calculation purposes, FDA is estimating the annual submission of one application. Under §§ 601.93(b)(3) and 601.94, FDA estimates 240 hours for a manufacturer of a new biological product to develop patient labeling, and to submit the appropriate information and promotional labeling to FDA. The majority of the burden for developing the patient labeling is included under the reporting requirements for § 601.94, therefore minimal burden is calculated for providing the guide to patients under § 601.91(b)(3).

There were a total of 5,338 amendments to an unapproved application or supplement and resubmissions submitted using Form FDA 356h.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form FDA No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
601.2(a)[2] and 610.60 through 610.65[3]	2567/356h	23	2	46	860	39,560
601.5(a)	N/A	11	3	33	20 minutes	11
601.6(a)	N/A	1	21	21	20 minutes	7
601.12(a)(5)	N/A	802	9	7,218	1	7,218
601.12(b)(1), (b)(3), and (e)[4]	356h[2]	166	5	830	80	66,400
601.12(c)(1) and (c)(3)[5]	356h[2]	141	5	705	50	35,250
601.12(c)(5)	356h[2]	42	5	210	50	10,500
601.12(d)(1), (d)(3), and (f)(3)[7]	356h[2]	246	3	738	23	16,974
601.12(f)(1)[6]	2567	112	2	224	40	8,960
601.12(f)(2)[6]	2567	53	3	159	20	3,180
601.12(f)(4) and 601.45	2567/2253	42	106	4,452	10	44,520
601.26(f)	N/A	1	1	1	1	1
601.27(b)	N/A	6	1	6	24	144
601.27(c)	N/A	10	1	10	8	80
601.70(b), (d), and 601.28	2252	39	2	78	24	1,872
601.91(b)(3) and 601.94	N/A	1	1	1	240	240
680.1(c)	N/A	9	1	9	2	18
680.1(b)(3)(iv)	N/A	1	1	1	2	2
Amendments/Re-submissions	356h	314	17	5,338	20	106,760
Total						341,697

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] The reporting requirements under §§ 610.9(a), 601.14, 601.27(a), 601.33, 601.34, 601.35, 610.11(g)(2), 640.17, 640.25(c), 640.56(c), 640.74(b)(2), 660.51(a)(4), and 680.1(b)(2)(iii) are included in the estimate under § 601.2(a).

[3] The reporting requirements under §§ 640.70(a), 640.74(b)(3) and (b)(4), 640.84(a) and (c), 640.94(a), 660.2(c), 660.28(a), (b), and (c), 660.35(a), (c) through (g), and (i) through (m), 660.45, and 660.55(a) and (b) are included under §§ 610.60 through 610.65.

[4] The reporting requirements under §§ 610.9(a), 600.15(b), 610.11(g)(2), 610.53(d), 606.110(b), 640.6, 640.17, 640.21(c), 640.22(c), 640.25(c), 640.56(c), 640.64(c), 640.74(a) and (b)(2), 640.120, and 680.1(d) are included in the estimate under § 601.12(b).

[5] The reporting requirements under §§ 610.9(a), 640.17, 640.25(c), 640.56(c), and 640.74(b)(2) are included in the estimate under § 601.12(c).

[6] The reporting requirement under § 601.14 is included in the estimate under § 601.12(f)(1) and (f)(2).

[7] The reporting requirement under § 601.14 is included in the estimate under § 601.12(f)(3).

Under table 2, the estimated recordkeeping burden of 1 hour is based on previous estimates for the recordkeeping requirements associated with the AER system.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
601.91(b)(2)(iii)	1	1	1	1	1

[1] There are no capital costs or operating costs associated with this collection of information.

Dated: January 20, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–1439 Filed 1–25–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0031]

Agency Information Collection Activities; Proposed Collection; Comment Request; Export of Medical Devices-Foreign Letters of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements for firms that intend to export certain unapproved medical devices.

DATES: Submit written or electronic comments on the collection of information by March 29, 2010.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Export of Medical Devices-Foreign Letters of Approval (OMB Control Number 0910–0264)—Extension

Section 801(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(e)(2)) provides for the exportation of an unapproved device under certain circumstances if the exportation is not contrary to the public health and safety and it has the approval of the foreign country to which it is intended for export.

Requesters communicate (either directly or through a business associate in the foreign country) with a representative of the foreign government to which they seek exportation, and written authorization must be obtained from the appropriate office within the foreign government approving the importation of the medical device. An alternative to obtaining written authorization from the foreign government is to accept a notarized certification from a responsible company official in the United States that the product is not in conflict with the foreign country's laws. This certification must include a statement acknowledging that the responsible company official making the certification is subject to the provisions of 18 U.S.C. 1001. This statutory provision makes it a criminal offense to knowingly and willingly make a false or fraudulent statement, or make or use a false document, in any manner within the jurisdiction of a department or agency of the United States.

The respondents to this collection of information are companies that seek to export medical devices.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of the Federal Food, Drug, and Cosmetic Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
801(e)(2)	38	1	38	3	114

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's estimate of the reporting burden is based on the experience of FDA's medical device program personnel.

Dated: January 20, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–1438 Filed 1–25–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0232]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Interstate Shellfish Dealers Certificate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by February 25, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0021. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Interstate Shellfish Dealers Certificate (42 U.S.C. 243) (OMB Control Number 0910–0021)—Extension

Under 42 U.S.C. 243, FDA is required to cooperate with and aid State and local authorities in the enforcement of their health regulations and is authorized to assist States in the prevention and suppression of communicable diseases. Under this authority, FDA participates with State regulatory agencies, some foreign nations, and the molluscan shellfish industry in the National Shellfish Sanitation Program (NSSP).

NSSP is a voluntary, cooperative program to promote the safety of molluscan shellfish by providing for the classification and patrol of shellfish growing waters and for the inspection and certification of shellfish processors. Each participating State and foreign nation monitors its molluscan shellfish processors and issues certificates for those that meet the State or foreign shellfish control authority's criteria. Each participating State and nation provides a certificate of its certified shellfish processors to FDA on Form FDA 3038, "Interstate Shellfish Dealer's Certificate." FDA uses this information to publish the "Interstate Certified Shellfish Shippers List," a monthly comprehensive listing of all molluscan shellfish processors certified under the cooperative program. If FDA did not collect the information necessary to compile this list, participating States would not be able to identify and keep out shellfish processed by uncertified processors in other States and foreign nations. Consequently, NSSP would not be able to control the distribution of uncertified and possibly unsafe shellfish in interstate commerce, and its effectiveness would be nullified.

In the **Federal Register** of June 2, 2009 (74 FR 26407), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one letter in response, which contained multiple comments. One comment was generally supportive of the Interstate Certified Shellfish Shippers List program and recommended maintaining the program as it currently exists. Another comment noted that it requires little effort to input information into the form and that the Interstate Shellfish List is critically important to the National Shellfish Sanitation Program. FDA agrees with the comments.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Activity	FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Submission of Interstate Shellfish Dealer's Certificate	3038	40	57	2,280	0.10	228

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that 40 respondents will submit 2,280 Interstate Shellfish Dealer's Certificates annually, for a total burden of 228 hours (2,280 submissions x 0.10 hours = 228 hours). This estimate is based on FDA's experience and the number of certificates received in the past 3 years.

Dated: January 20, 2010.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2010–1437 Filed 1–25–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–6023–N2]

Medicare Program; Approval of Independent Accrediting Organizations To Participate in the Advanced Diagnostic Imaging Supplier Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces our approval of the following three national accreditation organizations to accredit suppliers seeking to furnish the technical component (TC) of advanced diagnostic imaging services under the Medicare program: the American College of Radiology (ACR); the Intersocietal Accreditation Commission (IAC); and The Joint Commission (TJC).

FOR FURTHER INFORMATION CONTACT: August Nemec, (410) 786–0612.

SUPPLEMENTARY INFORMATION:

I. Background

Section 135(a) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) added section 1834(e) of the Social Security Act (the Act) that requires the Secretary to designate organizations in order to accredit suppliers furnishing the technical component (TC) of advanced diagnostic imaging service and establish procedures to ensure that the criteria used by an accreditation organization is specific to each imaging modality. Section 1834(e)(1)(B) of the Act defines advanced diagnostic imaging services as—

(i) Diagnostic magnetic resonance imaging, computed tomography, and nuclear medicine-including positron emission tomography; and

(ii) Such other diagnostic imaging services, including services described in section 1848(b)(4)(B) (excluding x-ray, ultrasound, and fluoroscopy), as specified by the Secretary in consultation with physician specialty organizations and other stakeholders.

Section 1848(b)(4)(B) of the Act defines imaging services as "imaging and computer-assisted imaging services, including x-ray, ultrasound (including echocardiography), nuclear medicine (including positron emission tomography), magnetic resonance imaging, computed tomography, and fluoroscopy, but excluding diagnostic and screening mammography. Suppliers, including physicians, non-physician practitioners and physician and non-physician organizations, of the TC of advanced diagnostic imaging services for which payment is made under the fee schedule established under section 1848(b) of the Act, must become accredited by a designated accreditation organization designated by the Secretary beginning January 1, 2012.

II. Application Requirements, Review, and Approval

The application requirements for accrediting organizations were finalized in the Physician Fee Schedule final rule published on November 25, 2009 (74 FR 61738) and set forth as application criteria in a November 25, 2009 **Federal Register** notice (74 FR 62189), as corrected in the November 30, 2009 correction notice (74 FR 62579).

We received three applications from our solicitation of accrediting organizations. An internal professional panel reviewed and compared the standards contained in the applications with our requirements in 42 CFR 414.68. Accordingly, to be considered for approval as a designated accreditation organization, each of accreditation organization had to furnish the following information specified in 42 CFR 414.l68:

- A list of the categories of advanced diagnostic imaging services for which the organization is requesting approval.
- A description of the accrediting organization's duration of accreditation (annual, biennual, and triennial), to include a summary of activities that occur at each cycle.
- A detailed description of how the organization's accreditation criteria satisfy the statutory standards at section 1834(e)(3) of the Act, including the following:

++ Qualifications of medical personnel who are not physicians and who furnish the TC of advanced diagnostic imaging services.

++ Qualifications and responsibilities of medical directors and supervising physicians, such as training in advanced diagnostic imaging services in a residency program, expertise obtained through experience or continuing medical education courses.

++ Procedures to ensure the safety of persons who furnish the TC of advanced diagnostic imaging services and individuals to whom such services are furnished.

++ Procedures to ensure the reliability, clarity, and accuracy of the technical quality of diagnostic images produced by the supplier.

++ Procedures to assist the beneficiary in obtaining the beneficiary's imaging records on request.

++ Procedures to notify CMS of any changes to the modalities subsequent to the organization's accreditation decision.

- An agreement to conform accreditation requirements to any changes in Medicare statutory requirements authorized by 1834(e) of the Act.
- An agreement to maintain or adopt standards that are equal to, or more stringent than, those of Medicare.
- Information that demonstrates the accreditation organization's knowledge and experience in the advanced diagnostic imaging arena.
- A plan for reducing the burden and cost of accreditation to small and rural suppliers—

++ The organization's proposed fees for accreditation for each modality in which the organization intends to offer accreditation; and

++ Any specific documentation requirements and attestations requested by CMS as a condition of designation.

- A detailed description of the organization's survey process, to include the following:

++ Type and frequency of the surveys performed.

++ The ability of the organization to conduct timely reviews of accreditation applications, to include a projection of the organization's national capacity for processing new applications before the January 1, 2012 accreditation deadline.

++ Description of the organization's audit procedures, including random site visits; site audits or other strategies for ensuring suppliers accredited by the organization maintain compliance throughout the period of accreditation.

++ Procedures for performing unannounced site surveys.

++ Copies of the organization's survey forms.

++ A description of the accreditation survey review process and the accreditation status decision-making process, including the process for addressing identified deficiencies with the accreditation requirements, and the procedures used to monitor the correction of deficiencies found during an accreditation survey.

++ Procedures for coordinating surveys with another accrediting organization (when the organization does not accredit all modalities) provided by an applicant for accreditation which the supplier provided.

++ Comprehensive information about the individuals who perform evaluations for the accreditation organization, including all of the following information:

—Detailed information about the size and composition of accreditation teams for each category of advanced medical imaging service supplier accredited.
—The number of professional and technical staff that are available for survey.
—The education, current employment and experience requirements surveyors must meet.
—The content and length of any orientation program.
—The frequency and types of in-service training provided to survey personnel.
—The evaluation systems used to monitor the performance of individual surveyors and survey teams.
—Policies and procedures regarding an individual's participation in the survey or accreditation decision process of any organization with which the individual is professionally or financially affiliated.

++ Policies and procedures used when an organization has a dispute regarding survey findings or an adverse decision.

• A description of the organization's data management and analysis capabilities in support of its surveys and accreditation decisions, including the kinds of reports, tables, and other displays generated by that system.

• The organization's procedures for investigating and responding to complaints against accredited facilities, including policies and procedures regarding coordination of these activities with relevant licensing bodies and CMS.

• A description of the organization's policies and procedures for withholding or removal of accreditation status for facilities that fail to meet the organization's accreditation standards and other actions taken by the organization in response to noncompliance with its accreditation criteria. These policies and procedures must include notifying CMS of facilities that fail to meet the requirements of the accrediting organization as required by CMS.

• The information submitted for notification of these organizations include—

++ A list of all accredited suppliers that the accrediting organization has accredited to include the type and category of accreditation currently held by each supplier, and the expiration date of each supplier's current accreditation; and

++ A list of all accreditation surveys scheduled to be performed by the organization.

• The accreditation organization must also submit the following supporting documentation:

++ A written presentation that demonstrates the organization's ability to furnish us with electronic data in ASCII comparable code.

++ A resource analysis that demonstrates that the organization's staffing, funding, and other resources are adequate to perform the required surveys and related activities.

+ A statement acknowledging that, as a condition for approval the organization will agree to the following:

—Provide a statement agreeing to notify us, in writing, of any supplier that had its accreditation revoked, withdrawn, revised, or any other remedial or adverse action taken against it by the accreditation organization within 30 calendar days of any such action taken.
—Notify all accredited suppliers within 10 calendar days of our withdrawal of the organization's approval of designation authority.
—Notify us, in writing, at least 30 calendar days in advance of the effective date of any proposed changes in accreditation requirements.
—Permit its surveyors to serve as witnesses if we take an adverse action based on accreditation findings.
—Notify us, in writing, within 2 calendar days of a deficiency identified in any accreditation entity where the deficiency poses an immediate jeopardy to the supplier's beneficiaries or a hazard to the general public.
—Provide, on an annual basis, summary data specified by us that relates to the past years' accreditations and trends.
—Attest that the organization will not perform any accreditation surveys of Medicare participating suppliers with which it has a financial relationship with or interest. For further information regarding the application requirements see the November 25, 2009 (74 FR 62189) and November 30, 2009 (74 FR 62579) notices.

The three national accreditation organizations that have applied for approval provided us with demonstrated evidence of their ability to accredit the categories of advanced diagnostic imaging services as defined in sections 1834(e)(1)(B) and 1848 (b)(4)(B) of the Act. Therefore, we are initially approving the following designated accreditation organizations to accredit suppliers furnishing the TC of all advanced imaging modalities (that is, computerized tomography, nuclear medicine, positron emission tomography, and magnetic resonance imaging) on or after January 1, 2010: (1) American College of Radiology (ACR); (2) the Intersocietal Accreditation Commission (IAC); and (3) The Joint Commission (TJC).

Authority: Section 1834(e) of the Act.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: January 20, 2010.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–1457 Filed 1–22–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Respiratory Integrative Biology and Translational Research Study Section, February 4, 2010, 8:30 a.m. to February 5, 2010, 12 p.m., Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on January 8, 2010, 75 FR 1066–1067.

The meeting will be held February 3, 2010, to February 4, 2010. The meeting time and location remain the same. The meeting is closed to the public.

Dated: January 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1404 Filed 1–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurobiology of Motivated Behavior Study Section, February 4, 2010, 8 a.m. to February 5, 2010, 5 p.m., Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA, 92109 which was published in the **FEDERAL REGISTER** on January 8, 2010, 75 FR 1066–1067.

The meeting will be held at the Catamaran Resort Hotel and Spa, 3999 Mission Boulevard, San Diego, CA 92109. The meeting dates and time

remain the same. The meeting is closed to the public.

Dated: January 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1405 Filed 1–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function C Study Section.

Date: February 11–12, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: San Diego Marriott Del Mar, 11966 El Camino Real, San Diego, CA 92130.

Contact Person: William A. Greenberg, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 4168, MSC 7806, Bethesda, MD 20892. (301) 435–1726. *greenbergwa@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Pathogens and their Vectors.

Date: February 12, 2010.

Time: 8 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Richard G. Kostriken, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892. 301–402–4454. *kostrikr@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Synthetic and Biological Chemistry A Study Section.

Date: February 17–18, 2010.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Mike Radtke, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892. 301–435–1728. *radtkem@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Topics in Methodology and Measurement in the Behavioral and Social Sciences.

Date: February 22, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Dana Jeffrey Plude, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892. 301–435–2309. *pluded@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Lung Host Defense and Inflammation.

Date: February 22, 2010.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Everett E. Sinnett, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892. 301–435–1016. *sinnett@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Applications: Gastrointestinal Mucosal and Developmental Biology.

Date: February 22, 2010.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Najma Begum, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892. 301–435–1243. *begumn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Retinopathy Studies.

Date: February 25, 2010.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Raya Mandler, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892. 301–402–8228. *rayam@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Biophysical and Physiological Neuroscience.

Date: February 25–26, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Eugene Carstea, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892. (301) 408–9756. *carsteae@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Topics in Microbiology.

Date: February 25–26, 2010.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Fouad A. El-Zaatari, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692. (301) 435–1149. *elzaataf@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Non-HIV Anti-Infective Therapeutics.

Date: February 25–26, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Rossana Berti, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892. 301–402–6411. *bertiros@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Visual Systems Small Business.

Date: February 25, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: George Ann McKie, DVM, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892. 301–996–0993. *mckiegeo@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Experimental Cancer Therapeutics.

Date: February 25–26, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Denise R. Shaw, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892. 301–435–0198. *shawdeni@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Topics in Virology.

Date: February 25–26, 2010.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John C. Pugh, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892. (301) 435–2398. *pughjohn@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vision Sciences and Technology.

Date: February 26, 2010.

Time: 8 a.m. to 5 p.m.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: George Ann McKie, DVM, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892. 301–996–0993. *mckiegeo@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, Special Topics: Social Science and Population Studies.

Date: February 26, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Valerie Durrant, PhD., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892. (301) 408–9882. *durrantv@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 15, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1407 Filed 1–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel—NIBIB Training SEP.

Date: March 4, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Melrose Hotel, The William Penn Room, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Manana Sukhareva, PhD, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3397, *sukharem@mail.nih.gov.*

Dated: January 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1412 Filed 1–25–10; 8:45 am]

BILLING CODE 4140–01–PP

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnerships in Biodefense Food and Waterborne Diseases.

Date: February 9, 2010.

Time: 11:45 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Gregory P. Jarosik, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–496–0695, *gjarosik@niaid.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1411 Filed 1–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.

Date: February 22–23, 2010.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Katrin Eichelberg, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–496–0818, *keichelberg@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1410 Filed 1–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Technologies for In Vivo Study.

Date: February 9, 2010.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Youngsuk Oh, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Mentored Clinical Scientist Reserach Awards.

Date: February 18–19, 2010.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Crystal City at Washington Reagan National, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Robert Blaine Moore, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7213, Bethesda, MD 20892, 301–594–8394, *mooreb@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Protein Capture Agents.

Date: February 18, 2010.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Youngsuk Oh, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Innovative Tools in Pediatric Research.

Date: February 24, 2010.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Youngsuk Oh, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, 301–435–0277, *yoh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1409 Filed 1–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Clinical Research and Field Studies of Infectious Diseases Study Section.

Date: February 15, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Soheyla Saadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular, Cellular and Developmental Neurobiological Small Business.

Date: February 22, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.

Contact Person: Eugene Carstea, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 408–9756, *carsteae@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Devices.

Date: February 22, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt at Fisherman's Wharf, 555 North Point Street, San Francisco, CA 94133.

Contact Person: Roberto J. Matus, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7854, Bethesda, MD 20892, 301–435–2204, *matusr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Neurophysiology, Devices, Auditory Devices and Neuroprosthesis Small Business.

Date: February 22–23, 2010.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.

Contact Person: Keith Crutcher, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1278, *crutcherka@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, DNDA Diversity Predoctoral Fellowships.

Date: February 22, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.

Contact Person: Paek-Gyu Lee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 435–1277, *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Radiation Therapy and Biology.

Date: February 23–24, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Bo Hong, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–435–5879, *hongb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Brain Disorders and Related Neuroscience.

Date: February 23–24, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.

Contact Person: Yvonne Bennett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–435–1121, *bennetty@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavioral Neuroscience Fellowship.

Date: February 23–24, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.

Contact Person: Kristin Kramer, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5205, MSC 7846, Bethesda, MD 20892, (301) 437–0911, *kramerkm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Healthcare Delivery and Clinical Science.

Date: February 23–24, 2010.

Time: 9 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Katherine Bent, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, 301–435–0695, *bentkn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cardiac Metabolism and Function.

Date: February 23, 2010.

Time: 2:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Maqsood A. Wani, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2114, MSC 7814, Bethesda, MD 20892, 301–435–2270, *wanimaqs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Advanced Neural Prosthetics Research and Development.

Date: February 23, 2010.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 W. Mission Bay Drive, San Diego, CA 92109.

Contact Person: Keith Crutcher, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1278, *crutcherka@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Basic Immunology, Vaccine, and Host Defense.

Date: February 24, 2010.

Time: 9:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

Contact Person: Calbert A. Laing, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, *laingc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cancer Biomarkers.

Date: February 24, 2010.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Sally A. Mulhern, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–5877, *mulherns@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–08–062: Alzheimer's Disease Pilot Clinical Trials.

Date: February 24, 2010.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Estina E. Thompson, PhD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–496–5749, *thompsone@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Integrative Biomedical Computing Resource Center.

Date: February 24–26, 2010.

Time: 6 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Salt Lake City Center, 255 South West Temple, Salt Lake City, UT 84101.

Contact Person: James J. Li, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1408 Filed 1–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board, February 8, 2010, 6:30 p.m. to February 10, 2010, 12 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on January 7, 2010, 75 FR 992–993.

This **Federal Register** Notice is being amended to change the open session times on February 9, 2010 to 8 a.m. to 3:30 p.m. instead of 8:30 a.m. to 4:30 p.m. and the closed session times to 3:30 p.m. to 5 p.m. instead of 4:30 p.m. to 5:30 p.m. Also, the open session start time on February 10, 2010 has been changed to 8 a.m. instead of 8:30 a.m.

Dated: January 19, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1406 Filed 1–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy And Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Small Business Innovation Research Contract Proposals.

Date: February 17, 2010.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Edward W. Schroder, PhD, Chief, Microbiology Review Branch, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 3116, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–435–8537, *eschroder@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Small Business Innovation Research Contract Proposals.

Date: February 24, 2010.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Edward W. Schroder, PhD, Chief, Microbiology Review Branch, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 3116, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–435–8537, *eschroder@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 20, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1475 Filed 1–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Hematology Program Projects.

Date: March 9, 2010.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel Ancillary Studies.

Date: March 19, 2010.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michael W. Edwards, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 20, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1474 Filed 1–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Innovative and Small-Business Ultrasound Imaging and Instrumentation.

Date: February 14, 2010.

Time: 5 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahai Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Behrouz Shabestari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892. (301) 435–2409. *shabestb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, BCMB Topics in Chemistry.

Date: February 17, 2010.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Kathryn M. Koeller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040N, MSC 7806, Bethesda, MD 20892. 301–408–9333. *koellerk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Child Development and Mechanisms of Stress.

Date: February 22, 2010.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)
Contact Person: Estina E. Thompson, PhD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892. 301–496–5749. *thompsone@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 20, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1473 Filed 1–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Erythrocyte Biology.
Date: February 10, 2010.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).
Contact Person: Bukhtiar H. Shah, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 435–1233, *shahb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; BDCN Member SEP.
Date: February 17, 2010
Time: 11 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jerry L. Taylor, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301–435–1175, *taylorje@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; LIRR Member Conflicts.
Date: February 23–24, 2010.
Time: 9 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: George M. Barnas, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 20, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–1471 Filed 1–25–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3222–N]

Medicare Program; Meeting of the Medicare Evidence Development and Coverage Advisory Committee, March 24, 2010

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting of the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC) (“Committee”) on Wednesday, March 24, 2010. The Committee generally provides advice and recommendations concerning the adequacy of scientific evidence needed to determine whether certain medical items and services can be covered under the Medicare statute. This meeting will examine currently available evidence on the use of erythropoiesis stimulating agents (ESAs) to manage anemia in patients who have chronic kidney disease. This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES: *Meeting date:* Wednesday, March 24, 2010 from 7:30 a.m. until 4:30 p.m., eastern daylight time (e.d.t.).

Deadline for Submission of Written Comments: Written comments must be received at the address specified in the **ADDRESSES** section of this notice by 5 p.m., eastern standard time (e.s.t.) on February 22, 2010. Once submitted, all comments are final.

Deadlines for Speaker Registration and Presentation Materials: The deadline to register to be a speaker and to submit Powerpoint presentation materials and writings that will be used in support of an oral presentation is Monday, February 22, 2010, at 5 p.m., e.s.t. Speakers may register by phone or via e-mail by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentation materials must be received at the address specified in the **ADDRESSES** section of this notice.

Deadline for All Other Attendees Registration: Individuals may register via e-mail at *MEDCAC_Registration@cms.hhs.gov* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by Wednesday, March 17, 2010 at 5 p.m., e.d.t.

Deadline for Submitting a Request for Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to contact the Executive Secretary as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than Friday, March 5, 2010 at 5 p.m., e.s.t.

ADDRESSES: *Meeting Location:* The meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

Submission of Presentations and Comments: Presentation materials and written comments that will be presented at the meeting must be submitted via e-mail to *MedCACpresentations@cms.hhs.gov* or by regular mail to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date

specified in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Maria Ellis, Executive Secretary for MEDCAC, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Coverage and Analysis Group, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410–786–0309) or via e-mail at *Maria.Ellis@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

MEDCAC, formerly known as the Medicare Coverage Advisory Committee (MCAC), provides advice and recommendations to CMS regarding clinical issues. (For more information on MCAC, see the December 14, 1998 **Federal Register** (63 FR 68780).) This notice announces the March 24, 2010 public meeting of the Committee. During this meeting, the Committee will examine the currently available evidence on the use of erythropoiesis stimulating agents (ESAs) to manage anemia in patients who have chronic kidney disease. Background information about this topic, including panel materials, is available at *http://www.cms.hhs.gov/coverage*. We encourage the participation of appropriate organizations with expertise in renal insufficiency/kidney disease, anemia, and ESAs.

II. Meeting Format

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. The Committee may limit the number and duration of oral presentations to the time available. Your comments should focus on issues specific to the list of topics that we have proposed to the Committee. The list of research topics to be discussed at the meeting will be available on the following Web site prior to the meeting: *http://www.cms.hhs.gov/mcd/index_list.asp?list_type=mcac*. We require that you declare at the meeting whether you have any financial involvement with manufacturers (or their competitors) of any items or services being discussed.

The Committee will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute unscheduled open public session for any attendee to address issues specific to the topics under consideration. At the conclusion of the day, the members will vote and the Committee will make its recommendation(s) to CMS.

III. Registration Instructions

CMS' Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the deadline listed in the **DATES** section of this notice. Please provide your full name (as it appears on your state-issued driver's license), address, organization, telephone, fax number(s), and e-mail address. You will receive a registration confirmation with instructions for your arrival at the CMS complex or you will be notified the seating capacity has been reached.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means, of all persons entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

Authority: 5 U.S.C. App. 2, section 10(a). (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 31, 2009.

Barry M. Straube,

Chief Medical Officer and Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 2010–1468 Filed 1–25–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2009–1137]

Merchant Marine Personnel Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) will hold a teleconference to discuss and prepare recommendations for the Coast Guard concerning the notice of proposed rulemaking (NPRM) on the Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (USCG–2004–17914). These recommendations were developed during a MERPAC working group meeting on January 5–6, 2010, and this teleconference will be held to finalize those proposed recommendations. The teleconference will be open to the public.

DATES: The teleconference call will take place on Thursday, February 11, 2010, from 11 a.m. until 2 p.m., EST. This teleconference may close early if all business is finished. Written material should reach the Coast Guard on or before February 2, 2010. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before February 2, 2010.

ADDRESSES: Members of the public may participate by dialing 1–877–950–5410. (Persons using international connections should dial 1–720–348–6543). You will then be prompted to dial your conference room number, which is 9876776#. Please ensure that you enter the "#" mark after the conference room number. Public participation is welcomed; however, the number of teleconference lines is limited, and lines are available first-

come, first-served. Members of the public may also participate by coming to Room 5–0622, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. You will be required to show picture identification in the form of a government issued identification card. We request that members of the public who plan to attend this meeting notify Mr. Mark Gould at 202–372–1409 so that he may notify building security officials. Send written material and requests to make oral presentations to Mr. Gould. This notice may be viewed in our online docket, USCG–2009–1137, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gould, Assistant Designated Federal Officer of MERPAC, telephone 202–372–1409, fax 202–372–1426.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). MERPAC is chartered under that Act. It provides advice and makes recommendations to the Assistant Commandant for Operations on issues concerning merchant marine personnel, such as implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, and developing standards of competency for ship's security officers.

Tentative Agenda of Meeting

The tentative agenda for the February 11, 2010, Committee meeting is as follows:

(1) Welcome and Opening Remarks—MERPAC Chairman Captain Andrew McGovern (11 a.m.–11:05 a.m.).

(2) Open discussion on the docket of the Coast Guard's NPRM concerning the implementation of the 1995 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (USCG–2004–17914) (11:05 a.m.–12:30 p.m.). (3) Public comment period (12:30 p.m.–1 p.m.).

(4) MERPAC vote on recommendations for the Coast Guard (1 p.m.–2 p.m.).

(5) Adjourn (2 p.m.).

This agenda is subject to change, and the meeting may adjourn early if all committee business has been completed.

Procedural

The Chairman of MERPAC is empowered to conduct the teleconference in a way that will, in his judgment, facilitate the orderly conduct of business. During its teleconference, the committee welcomes public comment. The committee will make every effort to hear the views of all interested parties, including the public. Written comments should reach the Coast Guard no later than February 2, 2010 and may be submitted to Mr. Mark Gould, Assistant Designated Federal Officer, MERPAC, at Commandant (CG–5221), ATTN MERPAC, U.S. Coast Guard, 2100 Second St., SW STOP 7126, Washington, DC 20593–7126.

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 Mr. Gould as soon as possible.

Dated: January 19, 2010.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2010–1415 Filed 1–25–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5382–N–01]

Notice of Proposed Information Collection for Public Comment: Tracking the Use of CDBG Homeowner and Small Landlord Disaster Assistance Grants

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* March 29, 2010.

ADDRESSES: Interest persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Levine, PhD, Department of Housing and Urban Development, 457 7th Street, SW., Washington, DC 20410; telephone (202) 402–3928 (this is not a toll-free number). Copies of the proposed data collection and other available documents may be obtained from Dr. Levine.

SUPPLEMENTARY INFORMATION: This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, such as permitting electronic submission of responses.

Title of Proposal: Tracking the Use of Homeowner and Small Landlord Disaster Assistance Grants.

Description of the need for the information and proposed use: In August, September, and October 2005, Hurricanes Katrina, Rita, and Wilma caused massive devastation in the Gulf region. As of February 2006, FEMA estimated that more than 300,000 homes suffered major or severe damage from the storm. In response to the widespread destruction caused by these three storms, Congress appropriated $19.7 billion in supplemental Community Development Block Grant (CDBG) program funds for Gulf Coast disaster recovery. Created in 1974, CDBG is one of the oldest programs administered by the Department of Housing and Urban Development (HUD), providing funding to States, cities, and counties nationwide to support neighborhood revitalization, housing rehabilitation, and economic development activities. The purpose of this study is to evaluate the role that supplemental CDBG disaster recovery funding has played in housing recovery in the three States most affected by hurricanes Katrina and Rita (Louisiana, Mississippi, and Texas) and to identify the most important factors affecting property owners' willingness and ability to rebuild or repair their storm-damaged properties. The results of the study will help HUD use current allocations of CDBG funds to make better progress on Katrina and Rita rebuilding efforts during FY 2011. The study findings also will help the Federal government respond more effectively to future disasters.

Members of affected public: Members of the following groups selected by

random sampling: homeowners and small landlords from a sample of 230 blocks selected from among the 15,399 blocks that FEMA estimates have been significantly affected by the 2005 hurricanes in Louisiana, Mississippi, and Texas.

Estimation of the total number of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of response: The researchers will survey a random sample of homeowners and small landlords; 984 participants will be surveyed in all; the surveys are expected to last 45 minutes. This constitutes a total burden hour estimate of 44,280 burden hours.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 7, 2010.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2010–1424 Filed 1–25–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–03]

Section 8 Management Assessment Program (SEMAP) Certification

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The requested information is used to assess a Public Housing Authority's (PHA's) management capabilities and performance in administering a housing choice voucher program. Assessment ratings are used as tool in addressing any potential deficiencies.

DATES: *Comments Due Date: February 25, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0215) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Section 8 Management Assessment Program (SEMAP) Certification.

OMB Approval Number: 2577–0215.

Form Numbers: HUD–52648.

Description of the Need For the Information and Its Proposed Use:

The requested information is used to assess a Public Housing Authority's (PHA's) management capabilities and performance in administering a housing choice voucher program. Assessment ratings are used as a tool in addressing any potential deficiencies.

Frequency of Submission: Biennially, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,437	1		12.91		31,462

Total Estimated Burden Hours: 31,462.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 19, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–1421 Filed 1–25–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–02]

Utility Allowance Adjustments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Multifamily project owners are required to advise the Secretary of the need for and request of a new utility allowance for tenants.

DATES: *Comments Due Date: February 25, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0352) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy

McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Utility Allowance Adjustments.

OMB Approval Number: 2502–0352.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use:

Multifamily project owners are required to advise the Secretary of the need for and request of a new utility allowance for tenants.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	4,821	1		0.500		2,411

Total Estimated Burden Hours: 2,411.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 19, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–1422 Filed 1–25–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–06]

Maintenance Wage Rate Wage Recommendation and Maintenance Wage Survey; Report of Additional Classification and Wage Rate

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information is used by HUD to determine or adopt prevailing wage rates for maintenance laborers and mechanics, and to approve or refer to the U.S. Department of Labor for approval, when needed, an employer's request for additional work classifications and wage rates.

DATES: *Comments Due Date: February 25, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2501–0011) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Maintenance Wage Rate Wage Recommendation and Maintenance Wage Survey; Report of Additional Classification and Wage Rate.

OMB Approval Number: 2501–0011.

Form Numbers: HUD–4750, HUD–4751, HUD–4752, and 4230–A.

Description of the Need for the Information and Its Proposed Use: The information is used by HUD to determine or adopt prevailing wage rates for maintenance laborers and mechanics, and to approve or refer to the U.S. Department of Labor for approval, when needed, an employer's request for additional work classifications and wage rates.

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	5,692	1		6.229		35,460

Total Estimated Burden Hours: 35,460.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 20, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–1485 Filed 1–25–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–01]

Affirmative Fair Housing, Marketing (AFHM) Plan-Multifamily Housing, Affirmative Fair Housing Marketing (AFHM) Plan-Single Family Housing and Affirmative Fair Housing Marketing (AFHM) Plan-Cooperatives/ Condominiums

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Developers of new MFH projects, single-family housing with HUD mortgage insurance, and condominium and cooperative housing with HUD mortgage insurance, will use these forms to describe their intent for marketing to ensure that they meet the Fair Housing guidelines concerning the manner in which their units are marketed to the public. In addition, owners and managers of MFH developments must update their AFHMP whenever justified by changing conditions and/or review the Form for needed updates at least every five years. The MFH Form is totally revised in order to provide clarity to MFH developers regarding their responsibilities. Minor edits and revisions were made to the Single Family Housing and Condominium/ Cooperative Housing forms to provide greater clarity to the respondents.

DATES: *Comments Due Date: February 25, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2529–0013) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Affirmative Fair Housing, Marketing (AFHM) Plan-MultifamilyHousing, Affirmative Fair Housing Marketing (AFHM) Plan-Single Family Housing andAffirmative Fair Housing Marketing (AFHM) Plan-Cooperatives/Condominiums.

OMB Approval Number: 2529–0013.

Form Numbers: HUD–935.2A, 935.2B and 935.2C.

Description of the Need for the Information and its Proposed Use: Developers of new MFH projects, single-family housing with HUD mortgage insurance, and condominium and cooperative housing with HUD mortgage insurance, will use these forms to describe their intent for marketing to ensure that they meet the Fair Housing guidelines concerning the manner in which their units are marketed to the public. In addition, owners and managers of MFH developments must update their AFHMP whenever justified by changing conditions and/or review the Form for needed updates at least every five years. The MFH Form is totally revised in order to provide clarity to MFH developers regarding their responsibilities. Minor edits and revisions were made to the Single Family Housing and Condominium/ Cooperative Housing forms to provide greater clarity to the respondents.

Frequency of Submission: Other, Initial application, as needed but a minimum of every five years for MFH Form.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	8,080	....	1.85	....	0.170	....	25,540

Total Estimated Burden Hours: 25,540.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 19, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–1423 Filed 1–25–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–04]

Enterprise Income Verification (EIV) System-Debts Owed to PHAs and Terminations

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection is required to identify families who no longer participate in a HUD rental assistance program due to adverse termination of tenancy and/or assistance, land owe a debit to a Public Housing Agency (PHA). The information will be used by PHAs to determine a family's suitability for rental assistance, and avoid providing limited Federal housing assistance to families who have previously demonstrated an inability to comply with HUD program requirements or who have an unpaid debt to a PHA.

DATES: *Comments Due Date:* February 25, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Enterprise Income Verification (EIV) System-Debts Owed to PHAs and Terminations.

OMB Approval Number: 2577–New.

Form Numbers: None.

Description of the Need for the Information And its Proposed Use: This information collection is required to identify families who no longer participate in a HUD rental assistance program due to adverse termination of tenancy and/or assistance, land owe a debit to a Public Housing Agency (PHA). The information will be used by PHAs to determine a family's suitability for rental assistance, and avoid providing limited Federal housing assistance to families who have previously demonstrated an inability to comply with HUD program requirements or who have an unpaid debt to a PHA.

Frequency of Submission: On occasion

	Number of respondents	Annual responses	×	Hours per responses	=	Burden hours
Reporting Burden	4,094	87.02		0.0833		29,689.17

Total Estimated Burden Hours: 29,689.17.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: *January 19, 2010.*

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–1420 Filed 1–25–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–05]

Enterprise Income Verification (EIV) System User Access Authorization Form and Rules of Behavior and User Agreement

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection is required to identify persons and agencies that will have access to PIH's EIV system in accordance with the Federal Privacy Act, as amended (5 U.S.C. 552a).

DATES: *Comments Due Date: February 25, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of

information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Enterprise Income Verification (EIV) System User Access, Authorization Form and Rules Of Behavior and User Agreement.

OMB Approval Number: 2577–New.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: This information collection is required to identify persons and agencies that will have access to PIH's EIV system in accordance with the Federal Privacy Act, as amended (5 U.S.C. 552a).

Frequency of Submission: On occasion, annually.

	Number of respondents	×	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	17,939		0.834		1.141		18,825.50

Total Estimated Burden Hours: 18,825.50.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 19, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–1419 Filed 1–25–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Folsom Lake State Recreation Area and Folsom Power House State Historic Park General Plan/Resource Management Plan

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the California Department of Parks and Recreation (State Parks) as lead agencies have made available for public review and comment a joint Final EIS/EIR for the Folsom Lake State Recreation Area and Folsom Power House State Historic Park General Plan/Resource Management Plan (GP/RMP). The GP/RMP involves alternatives for future use of the project area for recreation and resource protection and management.

A Notice of Availability of the joint Draft EIS/EIR was published in the **Federal Register** on February 5, 2008 (73 FR 6736). The written comment period on the Draft EIS/EIR ended on May 30, 2008. The Final EIS/EIR contains responses to all comments received and reflects comments and any additional information received during the review period.

DATES: Reclamation will not make a decision on the proposed action until at least 30 days after release of the Final EIS/EIR. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: Send requests for a compact disk or a bound copy of the Final EIS/EIR to Jim Micheaels, Senior Park and Recreation Specialist, State Parks, 7806 Folsom-Auburn Road, Folsom, CA 95630; telephone: 916–988–0513.

Copies of the Final GP/RMP and EIS/EIR will be available for review at: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?PROJECT_ID=543* and at the State Parks Web site at *http://www.parks.ca.gov/?page_id=22322.*

See **SUPPLEMENTARY INFORMATION** section for locations where copies of the Final EIS/EIR are available for public review.

FOR FURTHER INFORMATION CONTACT: Walter Clevenger, Natural Resources Specialist, Reclamation, at 916–989–7173; or Jim Micheaels, Senior Park and Recreation Specialist, State Parks, at 916–988–0513.

SUPPLEMENTARY INFORMATION: The GP/RMP is being prepared for the Folsom Lake State Recreation Area through a cooperative agreement between Reclamation and State Parks.

This planning activity encompasses approximately 20,000 acres of publicly accessible water and land owned by Reclamation and managed by State Parks' Gold Fields District. The GP/RMP will be the primary management document for the park unit, providing a defined purpose, vision, long-term goals, and management guidelines. It will be used by State Parks as a framework for guiding decision-making related to future development potential, on-going management, and public use of the Folsom Lake State Recreation Area.

The GP/RMP attempts to enhance and expand the recreation opportunities while also providing more active protection and management of natural and cultural resources. The GP/RMP is intended to be implemented over an extended period as determined by both user demand and need. To do so, the GP/RMP provides both park wide goals and guidelines relating to natural, cultural and visual resources, water quality, circulation, visitor services, interpretation and operations as well as direction for specific zones of the park. The GP/RMP designates 34 geographic management zones, with 12 on Lake Natoma and 22 on Folsom Lake. Each zone has a specific management emphasis and is designated with one of five land use designations: Recreation-High, Recreation-Medium, Low Intensity Recreation/Conservation, Preservation, or Administration.

The EIS/EIR is a program-level analysis of the potential environmental impacts associated with adoption of the GP/RMP. The GP/RMP is intended to be predominantly self-mitigating through implementation of GP/RMP policies and management strategies, and the EIS/EIR also includes measures intended to reduce the adverse effects of the GP/RMP.

Copies of the Final EIS/EIR are available for public review at the following locations:

- California State Parks, Folsom Lake SRA Office, 7755 Folsom Auburn Road, Folsom, CA 95630.
- Sacramento Central Library, 828 I Street, Sacramento, CA 95542.
- Folsom Public Library, Georgia Murray Building, 411 Stafford Street, Folsom, CA 95630.
- El Dorado County Main library, 345 Fair Lane, Placerville, CA 95667.
- El Dorado County Library/El Dorado Hills Branch, 7455 Silva Valley Parkway, El Dorado Hills, CA 95762.

• Placer County Library, Auburn Branch, 350 Nevada Street, Auburn, CA 95603.

• Placer County Library, Granite Bay Branch, 6475 Douglas Boulevard, Granite Bay, CA 95746 .

Before including your name, address, phone number, e-mail address, or other personal identifying information in any correspondence, you should be aware that your entire correspondence—including your personal identifying information—may be made publicly available at any time. While you can ask us in your correspondence to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 23, 2009.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 2010–1501 Filed 1–25–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOROR957000–L62510000–PM000: HAG10–0109]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 39 S., R. 1 W., accepted December 18, 2009
T. 27 S., R. 2 W., accepted January 12, 2010
T. 38 S., R. 2 E., accepted January 12, 2010
T. 27 S., R. 3 W., accepted January 12, 2010

Washington

T. 10 N., R. 27 E., accepted January 12, 2010

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Oregon/Washington State Office, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204.

Dated: January 13, 2010.

Fred O'Ferrall,

Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2010–1511 Filed 1–25–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-IA-2009-N011]

[96300-1671-0000-P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for permits to conduct certain activities with endangered species and/or marine mammals. Both the Endangered Species Act and the Marine Mammal Protection Act requires that we invite public comment on these permit applications.

DATES: Written data, comments or requests must be received by February 25, 2010.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703-358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703-358-2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Submit your written data, comments, or requests for copies of the complete applications to the address shown in **ADDRESSES**.

Applicant: Conroe Taxidermy, Conroe, TX, PRT-230925

The applicant request a permit to re-export the full mount with bleached skull sport-hunted trophy of one male scimitar-horned oryx (*Oryx dammah*), culled from a captive herd in the Republic of South Africa, for the purpose of enhancement of the survival of the species previously imported under PRT-MA209373-0 issue May 3, 2009.

Applicant: Oklahoma State University, Stillwater, OK, PRT-237938

The applicant requests a permit to import biological samples taken from five captive held western lowland gorillas (*Gorilla gorilla*) from Project Protection des Gorilles, Gabon, for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application was submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR Part 17) and/or marine mammals (50 CFR Part 18). Submit your written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications to the address shown in **ADDRESSES**. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: SAAMS, Alaska SeaLife Center, Seward, Alaska, PRT-877414

The applicant requests a permit and a letter of authorization for the rescue, rehabilitation and release of unlimited number stranded northern sea otters (*Enhydra lutris kenyoni*) and walrus (*Odobenus rosmarus*) in Alaska waters. This notification covers activities to be conducted by the applicant over a 5–year period.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: January 15, 2010

Brenda Tapia,

Program Analyst, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–1402 Filed 1–25–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000–L10200000.DD0000]

Notice of Reestablishment of the National Historic Oregon Trail Interpretive Center Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972. Notice is hereby given that the Secretary of the Interior has reestablished the Bureau of Land Management's (BLM) National Historic Oregon Trail Interpretive Center Advisory Board.

FOR FURTHER INFORMATION CONTACT: Allison Sandoval, Legislative Affairs and Correspondence (620), BLM, 1620 L Street, NW., MS–LS–401, Washington, DC 20036, telephone (202) 912–7434.

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Board is to advise the BLM's Vale District Manager regarding policies, programs, and long-range planning for the management, use, and further development of the Interpretive Center, including establishing a framework for an enhanced partnership and participation between the BLM and the Oregon Trail Preservation Trust, ensuring a financially secure, world-class historical and educational facility, operating a partnership between the Federal Government and the community that enriches and maximizes visitors' experiences in the region, and improving the coordination of advice and recommendations from the publics served.

Certification Statement: I hereby certify that the reestablishment of the National Historic Oregon Trail Interpretive Center Advisory Board is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2010–1509 Filed 1–25–10; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–464 and 731–TA–1160 (Final)]

Prestressed Concrete Steel Wire Strand From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–464 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation No. 731–TA–1160 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized and less-than-fair-value imports from China of prestressed concrete steel wire strand, provided for in subheading 7312.10.30 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as PC strand, produced from wire of nonstainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pre-tensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. PC strand is normally sold in the United States in sizes ranging from 0.25 inches to 0.70 inches in diameter. PC strand made from galvanized wire is only excluded from the scope if the zinc and/or zinc oxide coating meets or exceeds the 0.40 oz./ft^2 standard set forth in ASTM–A–475. The PC strand subject to this investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States ("HTSUS")." 74 FR 30536, December 23, 2009.

DATES: *Effective Date:* December 23, 2009.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of prestressed concrete steel wire strand, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on May 27, 2009, by American Spring Wire Corp. (Bedford Heights, OH); Insteel Wire Products Co. (Mt. Airy, NC); and Sumiden Wire Products Corp. (Dickson, TN).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO)

and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on April 27, 2010, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on May 11, 2010, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 6, 2010. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 7, 2010, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 4, 2010. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 18, 2010; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before May 18, 2010. On June 3, 2010, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 7, 2010, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 Fed. Reg. 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: January 20, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–1444 Filed 1–25–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on January 21, 2010, a proposed consent decree in United States v. Saint-Gobain Containers, Inc., Civil Action No. 2:10–cv–00121–TSZ was lodged with the United States District Court for the Western District of Washington.

In this action the United States sought civil penalties and injunctive relief at 15 of Saint-Gobain's manufacturing facilities across the United States for violations of Parts C and D of Title I of the Act, 42 U.S.C. 7470–7492, 7501–7515, the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) provisions of the Act; and the federally-enforceable State Implementation Plans (SIPs) for California, Illinois, Indiana, Louisiana, Massachusetts, Missouri, New Jersey, North Carolina, Oklahoma, Pennsylvania, Texas, Washington, and Wisconsin approved by EPA pursuant to Section 110 of the Act, 42 U.S.C. 7410, which incorporate and/or implement the above-listed federal requirements. The consent decree Under the Consent Decree, Saint-Gobain will pay a civil penalty of $2,250,000, which will be shared with the participating states and localities, and will implement substantial injunctive relief to reduce pollution by installing new control equipment and accepting much more stringent emission limits. Saint-Gobain will install controls at 29 furnaces involved in the settlement and will install continuous emission monitors at each of those facilities. The estimated capital cost of all of the pollution control projects to be implemented, is at least $112 million.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Saint-Gobain Containers, Inc.,* D.J. Ref. 90–5–2–1–06982/1.

The consent decree may be examined at the Office of the United States Attorney, 5220 United States Courthouse, 700 Stewart Street, Seattle, Washington 98101–1271, and at U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101. During the public comment period, the consent decree, may also be examined

on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $43.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–1450 Filed 1–25–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on January 20, 2010, a proposed Consent Decree ("Decree") in *United States* v. *Pacific Pipeline Systems,* LLC, Civil Action No. CV08–5768 DSF (Ssx) (C.D. Cal.) was lodged with the United States District Court for the Central District of California.

The civil action relates to an incident on March 23, 2005, when approximately 3,393 barrels of crude oil were discharged from the "Line 63" pipeline owned by Pacific Pipeline Systems LLC ("Pacific"). Some of the oil reached Pyramid Lake in the Angeles and Los Padres National Forest. In the civil action the United States sought to obtain civil penalties under 33 U.S.C. 1321(b)(7)(A), and injunctive relief under 33 U.S.C. 1319(b) against Pacific.

The proposed Decree would require Pacific to pay $1.3 million as a civil penalty, and to permanently purge and remove all oil from Line 63. However, Pacific is permitted to re-open Line 63 if it first relocates and buries several sections of the line, and institutes an enhanced integrity management program.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should reference *United States* v. *Pacific Pipeline Systems, LLC,* Civil Action No. CV08–5768 DSF (Ssx) (C.D. Cal.) and DOJ Ref. No. 90–5–1–1–09019.

The Decree may be examined at the Office of the United States Attorney, 300 North Los Angeles Street, Room 7516, Los Angeles, CA 90012. During the public comment period, the Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–1397 Filed 1–25–10; 8:45 am]

BILLING CODE 1410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on January 19, 2010, a proposed Amended Consent Decree in *United States of America* v. *Stauffer Management Company LLC (successor by merger to Atkemix Thirty-Seven, Inc.)* Civil Action No. 8:98–cv–01203–T–27TGW was lodged with the United States District Court for the Middle District of Florida, Tampa Division ("the Court").

This case was brought under authority of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.* and pertains to the Stauffer Chemical Superfund Site in Tampa, Hillsborough County, Florida ("the Site"). The Court entered a Consent Decree on July 23, 1998 ("1998 Decree"), under which Atkemix Thirty-Seven Inc. ("Atkemix") agreed to perform the remedial action at the Site set forth in the Environmental Protection Agency's ("EPA's") 1995 Record of Decision ("1995 ROD") and pay the government's response costs. However, during the first several years of 1995 ROD implementation, it became clear that, while the groundwater remedy was cleaning up the groundwater at the Site, the remedy chosen for the soils and sediments was failing to clean the soils and sediments up to the required performance standards.

EPA issued an Amended Record of Decision for the soils and sediments ("2006 ROD") while continuing to have Atkemix perform the groundwater cleanup under the 1995 ROD. It then became necessary to amend the 1998 Decree to include the revised soils and sediment cleanup under the 2006 ROD and to address other changes such as the name of the settling defendant. Atkemix merged into Stauffer Management Company LLC in December 2000. According to the Civil Docket, the Court had closed this case on July 24, 1998. However, on January 19, 2010, the Court entered an order granting the motion of the United States to reopen the case and reassign it. The Amended Consent Decree was filed with the Motion to Reopen and is deemed lodged as of January 19, 2010.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Amended Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *Stauffer Management Company LLC (successor by merger to Atkemix Thirty-Seven, Inc.),* D.J. Ref. 90–11–2–1227.

The Amended Consent Decree may be examined at U.S. EPA Region 4, 61 Forsyth Street, SE., Atlanta, GA 30303, ATTN: Elisa Roberts. During the public comment period, the Amended Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Amended Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of

$89.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address. In requesting a copy exclusive of appendices, please enclose a check in the amount of $24.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen M. Katz,

Assistant Chief, Environmental, Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–1451 Filed 1–25–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Corrected Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that on December 23, 2009, a proposed Consent Decree was filed with the United States District Court for the District of Idaho in *United States* v. *Union Pacific Railroad Company,* No. 10–2009–0082 (D. Idaho). The proposed Consent Decree entered into by the United States, the State of Idaho, and two railroads (Union Pacific Railroad Company and BNSF Railway Company), resolves the United States' claims against the railroads under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606, 9607. Under the terms of the Consent Decree, Union Pacific Railroad Company will pay the United States $655,094 and BNSF Railway Company $427,000 in past costs incurred in addressing the contamination at the Wallace Yard and Spur Lines Site within the larger Bunker Hill Mining Site in the C'ouer d'Alene Basin of Idaho. In addition to payments for past response costs, the Consent Decree requires the railroads to perform certain clean up actions selected by EPA and identified in the Statement of Work attached to the Consent Decree. Further, the settlement requires the railroads to contribute to the Basin-wide cleanup program to address contamination of residential properties.

The Department of Justice will receive comments relating to the proposed Consent Decree for an additional period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Union Pacific Railroad Company,* DJ Ref. No. 90–11–3–09488.

Notice of this settlement was originally published at 75 FR 1412 on January 11, 2010. The notice, however, contained two typographical errors. First the case number provided for the matter was incorrect and second the notice directed commenters to reference *United States et al.* v. *City of West Point, et al.* DJ Ref. No. 90–5–1–1–09326. Commenters who have already submitted comments with this erroneous reference need not re-submit their comments because procedures have been put in place to ensure the comments are properly considered.

The proposed Agreement may be examined at the Office of the United States Attorney for the District of Idaho, Washington Group Plaza, 800 Park Boulevard, Suite 600, Boise, ID 83712–9903, and at the Environmental Protection Agency, Region 9, 1200 Sixth Avenue, Seattle, Washington 98101. During the public comment period, the proposed Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $42.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–1487 Filed 1–25–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Advanced Media Workflow Association, Inc.

Notice is hereby given that, on December 18, 2009, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act") Advanced Media Workflow Association, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AmberFin, Basingstoke, Hampshire, United Kingdom; Aspera, Inc., Emeryville, CA; SAN Solutions, Reno, NV; Signiant, Burlington, MA; and Michael Kragosian (individual member), Calabasas, CA have been added as parties to this venture.

Also, Digital Laundry, New York, NY; Ninsight, Issy les Moulineaux, France; and William C. Miller (individual member), New Rochelle, NY have withdrawn as parties to this venture. In addition, Pro-Bel has changed its name to Snell, Reading, Berkshire, United Kingdom.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Advanced Media Workflow Association, Inc. intends to file additional written notifications disclosing all changes in membership.

On March 28, 2000, Advanced Media Workflow Association, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 29, 2000 (65 FR 40127).

The last notification was filed with the Department on September 24, 2009. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 22, 2009 (74 FR 54594).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 2010–1242 Filed 1–25–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

[OMB Control No. 1205–0025, Extension With Revision]

Comment Request for Information Collection for Job Corps Application Data

AGENCY: Office of Job Corps.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public

and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the collection of Job Corps application data collection forms (OMB Control NO. 1205–0025, expires 05/31/2010): ETA 652, Job Corps Data Sheet, ETA 655, Statement from Court or Other Agency, and ETA 682, Child Care Certification.

Proposed Change: ETA Form 652 currently captures information for a homeless/runaway/foster child in one category. Job Corps proposes a slight modification to this form to capture the information for a homeless/runaway/foster child in three separate categories.

A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before March 29, 2010.

ADDRESSES: Submit written comments to Linda Marshall, Room N4456, Office of Job Corps, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3106 (this is not a toll-free number). Fax: 202–693–2767. E-mail: *marshall.linda@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Job Corps is an intensive, residential training program for at-risk youth age 16 through 24 to address multiple barriers to employment faced by youth throughout the United States. Job Corps is authorized by Title I, Subtitle C, of the Workforce Investment Act (WIA) of 1998. The program is principally carried out through a nationwide network of 123 Job Corps centers. The centers are located at facilities either owned or leased by the Federal Government. The Department has a direct role in the operation of Job Corps, and does not serve as a pass-through agency for this program. It is the Department's responsibility to establish Job Corps centers and to select operators for them. Of the 123 current centers, 28 are operated by the Departments of Agriculture and the Interior, through interagency agreements. These centers are located on Federal lands controlled by these two agencies. The remaining 95 centers are managed and operated by large and small corporations and nonprofit organizations selected by the Department in accordance with the Federal Acquisition Regulations, and in most cases through a competitive procurement process. Many of the current contractors manage and operate more than one center.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

ETA form No.	Total number of respondents	Frequency	Average time per respondent	Total burden hours	Currently approved hours	NET change
Job Corps Application, ETA 652	102,833	1/person	10 minutes	17,139	39,397	−22,258
Statement from Court, ETA 655	102,833	1/person	1 minute	1,714	7,644	−5,930
Child Care Certification, ETA 682 ..	4,886	On occasion	30 seconds	41	640	−599
Total	.....	.....	.....	18,894	47,781	−28,887

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension with changes.

Title: Job Corps Application Data.

OMB Number: OMB 1205–0025.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: January 25, 2010.

Lynn A. Intrepidi,

Interim National Director, Office of Job Corps.

[FR Doc. 2010–1428 Filed 1–25–10; 8:45 am]

BILLING CODE 4510–23–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting Notice; Board of Directors and Five Committees of the Board

DATE AND TIME: The Legal Services Corporation Board of Directors and five of the Board's committees will meet on January 29–30, 2010 in the order set forth in the following schedule. On January 29, the first meeting will commence at 11 a.m., Eastern Time. Each meeting thereafter will commence promptly upon adjournment of the immediately preceding meeting. On January 30, the first meeting will commence at 9 a.m., Eastern Time.

LOCATION: Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007, 3rd Floor Conference Center.

PUBLIC OBSERVATION: For all meetings and portions thereof open to public observation, members of the public who are unable to attend but wish to listen to the proceedings may do so by following the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. From time to time the presiding Chairman may solicit comments from the public.

Call-In Directions for Open Sessions

- *Call toll-free number:* 1–(866) 451–4981;
- *When prompted, enter the following numeric pass code:* 5907707348;

• When connected to the call, please "MUTE" your telephone immediately.

Meeting Schedule

	Time [1]
Friday, January 29, 2010	
1. Audit Committee	11 a.m.
2. Governance & Performance Review Committee.	
3. Provision for the Delivery of Legal Services Committee ("Provisions Committee").	
4. Finance Committee.	
Saturday, January 30, 2010	
5. Operations & Regulations Committee.	9 a.m.
6. Board of Directors.	

STATUS OF MEETING: Open, except as noted below.

• *Board of Directors*—Open, except that a portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors to consider and perhaps act on the General Counsel's report on potential and pending litigation involving LSC, and to hear a report on an internal personnel matter. The closed session will also include a briefing by LSC's Inspector General.[2] A *verbatim* written transcript will be made of the closed session of the Board meeting. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2), (6) and (9)(B), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(a), (e) and (g), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

Matters To Be Considered

Audit Committee

Agenda

1. Approval of agenda.
2. Approval of Minutes of the Committee's Open Session meeting of October 30, 2009.
3. Approval of Minutes of the Audit & Finance Committees' Open Session joint meeting of November 30, 2009.
4. Presentation of the Fiscal Year (FY) 2009 Annual Financial Audit.
• Ronald "Dutch" Merryman, Assistant Inspector General for Audits.
• Uzma Malik-Dorman, Thompson, Cobb, Bazilio & Associates.
5. Review of LSC's IRS Form 990 for FY 2009.
• David Richardson, Treasurer & Comptroller.
6. Staff report on classification of LSC consultants.
• Mattie Cohan, Senior Assistant General Counsel.
7. Report on LSC's 403(b) plan performance.
• Charles Jeffress, Chief Administrative Officer.
8. Inspector General briefing.
• Jeffrey Schanz, Inspector General.
9. Public comment.
10. Consider and act on other business.
11. Consider and act on adjournment of meeting.

Governance and Performance Review Committee

Agenda

1. Approval of Agenda.
2. Approval of Minutes of the Committee's Open Session meeting of October 31, 2009.
3. Approval of Minutes of the Committee's Open Session meeting of November 30, 2009.
4. Consider and act on self-assessment documents for 2009.
• Chairman's observations on individual self-assessments and possible follow-up.
• Chairman's observations on results of the Board self-assessment and the upcoming full Board discussion.
5. New Board training plan for 2010.
• Victor Fortuno, General Counsel & Interim President John Constance, Director, Office of Government Relations & Public Affairs.
6. Consider and act on other business.
7. Public Comment.
8. Consider and act on motion to adjourn meeting.

Provision for the Delivery of Legal Services Committee

Agenda

1. Approval of agenda.
2. Approval of Minutes of the Committee's Open Session meeting of October 30, 2009.
3. Staff status report on proposed Provisions Committee Agenda items for 2010 Committee meetings.
• Karen Sarjeant, Vice President for Programs & Compliance.
a. LSC Private Attorney Involvement Action Plan—Help Close the Justice Gap: Unleash the Power of Pro Bono.
b. Garten Loan Repayment Assistance Program.
c. Special Population Funding and Delivery (Native American and Migrant).
d. Board Governance Work Group Activities.
e. LSC training initiatives: compliance, board governance, and fiscal operations training.
f. Legal services delivery issues affected by changes in law and regulations.
g. Additional items proposed by Committee members.
4. Public comment.

Finance Committee

Agenda

1. Approval of agenda.
2. Approval of Minutes of the Committee's Open Session meeting of October 31, 2009.
3. Approval of Minutes of the Audit & Finance Committees' Open Session joint meeting of November 30, 2009.
4. Consider and act on Consolidated Operating Budget for Fiscal Year (FY) 2010, Resolution 2009–001.
• Presentation by David Richardson, Treasurer & Comptroller.
• Comments by Charles Jeffress, Chief Administrative Officer.
5. Presentation on LSC's Financial Reports for the first three months of FY 2010.
• Presentation by David Richardson.
• Comments by Charles Jeffress.
6. Staff report on submission of FY 2011 budget request.
• Presentation by John Constance, Director, Office of Government Relations & Public Affairs.
7. Staff report on IRS review of classification of LSC consultants.
• Presentation by Mattie Cohan, Senior Assistant General Counsel.
8. Public comment.
9. Consider and act on other business.
10. Consider and act on adjournment of meeting.

Operations & Regulations Committee

Agenda

1. Approval of agenda.
2. Approval of Minutes of the Committee's Open Session meeting of October 30, 2009.
3. Consider and act on potential initiation of rulemaking to amend 45 CFR Part 1642 (and related technical amendment of Part 1609 and 1610) to repeal the prohibition on claiming and collecting and retention of attorneys' fees.
• Presentation by Mattie Cohan, Senior Assistant General Counsel.
• Public Comment.
4. Consider and act on potential initiation of rulemaking to amend 45

[1] Please note that all times in this notice are *Eastern Time.*

[2] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

CFR Part 1607 to require grantee governing bodies to have audit committees.

- Presentation by Mattie Cohan.
- Public Comment.

5. Consider and act on potential initiation of rulemaking to amend 45 CFR Part 1622 to remove from its requirements the Board's Governance & Performance Review Committee when it is meeting to consider performance evaluations of the President and the Inspector General.

- Presentation by Mattie Cohan.
- Public Comment.

6. Consider and act on the LSC Board of Directors' role in collective bargaining.

- Presentation by Victor Fortuno, General Counsel & Interim President.

7. Report on status of GAO review.

- Presentation by John Constance, Director, Office of Government Relations and Public Affairs.

8. Public comment.

9. Consider and act on other business.

10. Consider and act on adjournment of meeting.

Board of Directors

Agenda

Open Session

1. Approval of agenda.

2. Approval of Minutes of the *Board's* Open Session meeting of October 31, 2009.

3. Approval of Minutes of the *Board's* Open Session *Telephonic* meeting of November 23, 2009.

4. Consider and act on nominations for the Chairman of the Board of Directors.

5. Consider and act on nominations for the Vice Chairman of the Board of Directors.

6. Consider and act on delegation to the Chairman of authority to make Committee assignments.

7. *Chairman's* Report.

8. *Members'* Reports.

9. *President's* Report.

10. *Inspector General's* Report.

11. Consider and act on the report of the *Provision for the Delivery of Legal Services Committee.*

12. Consider and act on the report of the *Finance Committee.*

13. Consider and act on the report of the *Audit Committee.*

14. Consider and act on the report of the *Operations & Regulations Committee.*

15. Consider and act on the report of the *Governance & Performance Review Committee.*

16. Consider and act on *Resolution 2010–002* Recognizing Helaine M. Barnett for Six Years of Dedicated Service as President of the Legal Services Corporation.

17. Public comment.

18. Consider and act on other business.

19. Consider and act on whether to authorize an executive session of the *Board* to address items listed below under *Closed Session.*

Closed Session

20. Consider and act on General Counsel's report on potential and pending litigation involving LSC.

21. IG briefing of the Board.

22. Report on Internal Personnel Matter.

23. Consider and act on motion to adjourn meeting.

Contact Person for Information: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: January 22, 2010.

Patricia D. Batie,

Acting Corporate Secretary.

[FR Doc. 2010–1562 Filed 1–22–10; 11:15 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–010)]

NASA Advisory Council; Technology and Innovation Committee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announce a meeting of the newly formed Technology and Innovation Committee of the NASA Advisory Council (NAC). This will be the first meeting of this Committee. The Meeting will be held for the purpose of reviewing NASA's technology program and exploring the culture of innovation within NASA and ways to expand NASA's technology activities to stimulate innovation, mature and infuse technologies in meeting the goals, needs, and challenges of NASA and national priorities.

DATES: Thursday, February 11, 2010, 8:30 a.m. to 6 p.m., PST.

ADDRESSES: NASA Ames Conference Center (Building 3), Rooms: Showroom and Mezzanine, 500 Severyns Road, NASA Research Park, NASA Ames Research Center (ARC), Moffett Field, CA 94035–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Howard, Office of the Chief Engineer, Washington, DC 20546, (202) 358–0898, fax (202) 358–3296.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following topics:

—NASA's Technology and Innovation Study report

—NASA FY2011 President's Budget Request (technology elements)

—Technology organizational structure within NASA

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. The meeting will be open to the public up to the seating capacity of the room. Visitors will need to show a valid, officially-issued picture identification such as driver's license to enter into the NASA Research Park, and must state they are attending the session in the NASA ARC Conference Center. All non-U.S. citizens must submit their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), Permanent Resident Alien card number and expiration date (if applicable), place and date of entry into the U.S., and Passport information to include Country of issue, number, and expiration date to Rho Christensen, Protocol Specialist, Office of the Center Director, NASA ARC, Moffett Field, CA, by January 27, 2010. Any person interested in participating in the meeting by telephone should contact Rho Christensen for the toll-free number and pass code for the meeting. For questions, please call Rho Christensen at (650) 604–2476.

January 19, 2010.

P. Diane Rausch

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2010–1403 Filed 1–25–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Friday, January 29, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Withdrawal of Final Rule—Part 706 of NCUA's Rules and Regulations, Unfair or Deceptive Acts or Practices.
2. Insurance Fund Report.

RECESS: 11 a.m.

TIME AND DATE: 11:15 a.m., Friday, January 29, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of Supervisory Activities. Closed pursuant to Exemptions (8), (9)(A)(ii) and 9(B).
2. Personnel (3). Closed pursuant to some or all of the following: Exemptions (2), (6) and (9)(A)(ii).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2010–1652 Filed 1–22–10; 4:15 pm]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0017]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 31, 2009 to January 13, 2010. The last biweekly notice was published on January 12, 2010 (75 FR 1655).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible

effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North,

11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from January 26, 2010. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: October 30, 2009.

Description of amendment request: The amendments would revise License Condition C.(1) for Units 1 and 3, and the Technical Specifications (TS) for all three units, to remove requirements no longer applicable due to the completion of power uprate, replacement of steam generators, removal of part-length control element assemblies (CEAs), and completion of a core protection calculator (CPC) upgrade, and to make a minor administrative change to the nomenclature of the containment sump trash racks and screens.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment includes the following changes that are considered to be administrative and/or editorial changes:

A. Remove superseded references to 3876 megawatts thermal (MWt) and related information to this value from Unit 1 and Unit 3 Operating Licenses and Unit 1, 2, and 3 Technical Specifications.

This change is administrative. The change only removes the references to 3876 MWt and related information to this value and leaves the references to 3990 MWt.

B. Remove references to Part Length Control Element Assemblies.

This change is administrative because it only removes references to part length CEAs which have been replaced by part strength CEAs.

C. Remove outdated pages and other references as a result of the CPC upgrade, and adjust the indentation of the logical connectors AND and OR in TS 3.2.4, between Required Actions B.1, B.2.1, and B.2.2.

This change is administrative because it removes the redundant TS pages identified as "(Before CPC Upgrade) or (Before CPCS Upgrade)" and removes the reference to "(After CPC Upgrade) or (After CPCS Upgrade)" from various TS pages that will be renumbered and remain in place. The CPC upgrade has been completed. The adjustment of the indentation of the logical connectors AND and OR in TS 3.2.4 is consistent with the Action numbers and with TS 1.2.

D. Change "trash racks and screens" to "strainers."

This change is administrative. The change from "trash racks and screens" to "strainers" does not change the intent of the Surveillance Requirement 3.5.3.8 to verify, by visual inspection, that each [emergency core cooling system] ECCS train containment sump suction inlet is not restricted by debris and the suction inlet strainers show no evidence of structural distress or abnormal corrosion.

E. Delete inspection requirements for Steam Generators (SG) with Alloy 600 MA tubes.

This change is administrative because APS [Arizona Public Service Company] has completed the SG replacement project which removed all SGs containing Alloy 600 MA tubes.

As discussed above, the proposed amendment involves administrative and/or editorial changes only. The proposed amendment does not impact any accident initiators, analyzed events, or assumed mitigation of accident or transient events. The proposed changes do not involve the addition or removal of any equipment or any design changes to the facility. The proposed changes do not affect any plant operations, design function, or analysis that verifies the capability of structures, systems, and components (SSCs) to perform a design function. The proposed changes do not change any of the accidents previously evaluated in the UFSAR [updated final safety analysis report]. The proposed changes do not affect SSCs, operating procedures, and administrative controls that have the function of preventing or mitigating any of these accidents.

Therefore, the proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

As stated in response to standard 1, the proposed amendment only involves administrative and/or editorial changes. No actual plant equipment or accident analyses will be affected by the proposed changes. The proposed changes will not change the design function or operation of any SSCs. The proposed changes will not result in any new failure mechanisms, malfunctions, or accident initiators not considered in the design and licensing bases. The proposed amendment does not impact any accident initiators, analyzed events, or assumed mitigation of accident or transient events. Therefore, this proposed change does not create the possibility of an accident of a new or different kind than previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

As stated in response to standard 1, the proposed amendment only involves administrative and/or editorial changes. The proposed change does not involve any physical changes to the plant or alter the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis

acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Michael T. Markley.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: October 27, 2009.

Description of amendments request: The proposed amendments would modify technical specifications (TSs) requirements related to primary containment isolation instrumentation in accordance with the Nuclear Regulatory Commission-approved Technical Specification Task Force (TSTF), Improved Standard Technical Specifications change traveler, TSTF–306, Revision 2, "Add action to LCO 3.3.6.1 to give option to isolate the penetration." The proposed amendment would revise TS Section 3.3.6.1, "Primary Containment Isolation Instrumentation," by adding an ACTIONS note allowing intermittent opening, under administrative control, of penetration flow paths that are isolated. Additionally, the traversing in-core probe (TIP) system would be added as a separate isolation function with an associated Required Action to isolate the penetration within 24 hours rather than immediately initiating a unit shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The addition of the note that the penetration flow path may be unisolated under administrative control simply provides consistency with what is already allowed elsewhere in TSs. The isolation function of the TIP valves is mitigative, and does not create any increased possibility of an accident. Also, the operation of the manual shear valves is unaffected by this activity. The ability to manually isolate the TIP system by either the normal isolation ball valves or the shear valves would be unaffected by the inoperable instrumentation. The Required Actions and their associated Completion Times are not initiating conditions for any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety-related system. As a result no new failure modes are being introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not affect the operation of plant equipment or the function of any equipment assumed in the accident analysis. The allowance to unisolate a penetration flow path will not have a significant effect on the margin of safety because the penetration flow path can be isolated manually, if needed. This change simply provides consistency with what is already allowed elsewhere in TSs. The option to isolate a TIP penetration will ensure the penetration will perform as designed in the accident analysis. The ability to manually isolate the TIP system is unaffected by the inoperable instrumentation. The proposed change does not impact any safety analysis assumptions or results.

Therefore, the proposed change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602.

NRC Branch Chief: Thomas H. Boyce.

Dominion Nuclear Connecticut Inc., et al., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: November 23, 2009.

Description of amendment request: The proposed license amendment request would revise the Millstone Power Station, Unit 3 Technical Specification (TS) 6.8.4.g, "Steam Generator Program," to exclude a portion of the tubes below the top of the steam generator tubesheet from periodic steam generator tube inspections. This request would also remove reference to the previous Cycle 13 interim alternate repair criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the steam generator inspection criteria and the steam generator inspection reporting criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed change to the steam generator tube inspection and repair criteria are the steam generator tube rupture (SGTR) event and the feedline break (FLB) postulated accidents.

During the SGTR event, the required structural integrity margins of the steam generator tubes and the tube-to-tubesheet joint over the H* distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the constraint provided by the tube-to-tubesheet joint. This constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet, and from the differential pressure between the primary and secondary side. Based on this design, the structural margins against burst, as discussed in Regulatory Guide (RG) 1.121, "Bases for Plugging

Degraded [pressurized-water reactor] PWR Steam Generator Tubes," are maintained for both normal and postulated accident conditions.

The proposed change has no impact on the structural or leakage integrity of the portion of the tube outside of the tubesheet. The proposed change maintains structural integrity of the steam generator tubes and does not affect other systems, structures, components, or operational features. Therefore, the proposed change results in no significant increase in the probability of the occurrence of a SGTR accident.

At normal operating pressures, leakage from primary water stress corrosion cracking below the proposed limited inspection depth is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region. The consequences of an SGTR event are affected by the primary-to secondary leakage flow during the event. However, primary-to-secondary leakage flow through a postulated broken tube is not affected by the proposed changes since the tubesheet enhances the tube integrity in the region of the hydraulic expansion by precluding tube deformation beyond its initial hydraulically expanded outside diameter. Therefore, the proposed changes do not result in a significant increase in the consequences of a SGTR.

The consequences of a steam line break (SLB) are also not significantly affected by the proposed changes. During a SLB accident, the reduction in pressure above the tubesheet on the shell side of the steam generator creates an axially uniformly distributed load on the tubesheet due to the reactor coolant system pressure on the underside of the tubesheet. The resulting bending action constrains the tubes in the tubesheet thereby restricting primary-to-secondary leakage below the midplane.

Primary-to-secondary leakage from tube degradation in the tubesheet area during the limiting accident (*i.e.,* a SLB) is limited by flow restrictions. These restrictions result from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of potential crack face opening as compared to free span indications.

The leakage factor of 2.49 for Millstone Power Station Unit 3 (MPS3), for a postulated SLB/FLB, has been calculated as shown in Table RA124–2 of Enclosure 5. The leakage factor of 2.49 is a bounding value for all steam generators, both hot and cold legs, in Table RA124–2. Specifically, for the condition monitoring (CM) assessment, the component of leakage from the prior cycle from below the H* distance will be multiplied by a factor of 2.49 and added to the total leakage from any other source and compared to the allowable accident induced leakage limit. For the operational assessment (OA), the difference in the leakage between the allowable accident induced leakage and the accident induced leakage from sources other than the tubesheet expansion region will be divided by 2.49 and compared to the observed operational leakage.

The probability of a SLB is unaffected by the potential failure of a steam generator tube as the failure of the tube is not an initiator for a SLB event. SLB leakage is limited by leakage flow restrictions resulting from the leakage path above potential cracks through the tube-to-tubesheet crevice. The leak rate during postulated accident conditions (including locked rotor) has been shown to remain within the accident analysis assumptions for all axial and or circumferentially orientated cracks occurring 13.1 inches below the top of the tubesheet. The accident induced leak rate limit is 1.0 gpm. The technical specification (TS) operational leak rate is 150 gpd (0.1 gpm) through any one steam generator. Consequently, there is significant margin between accident leakage and allowable operational leakage. The SLB/FLB leak rate ratio is only 2.49 resulting in significant margin between the conservatively estimated accident leakage and the allowable accident leakage (1.0 gpm).

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change that alters the steam generator inspection criteria and the steam generator inspection reporting criteria does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

The proposed change that alters the steam generator inspection criteria and the steam generator inspection reporting criteria maintains the required structural margins of the steam generator tubes for both normal and accident conditions. Nuclear Energy Institute (NEI) 97–06, Revision 2, "Steam Generator Program Guidelines" and RG 1.121, are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that steam generator tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the Nuclear Regulatory Commission (NRC) for meeting General Design Criteria (GDC) 14, "Reactor Coolant Pressure Boundary," GDC 15, "Reactor Coolant System Design," GDC 31, "Fracture Prevention of Reactor Coolant Pressure Boundary," and GDC 32, "Inspection of Reactor Coolant Pressure Boundary," by reducing the probability and consequences of a SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, Westinghouse Electric Company, LLC (Westinghouse) report WCAP–1 7071 -P, "H*: Alternate Repair Criteria for the Tubesheet Expansion Region in Steam Generators with Hydraulically Expanded Tubes (Model F)," defines a length of degradation free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the proposed limited tubesheet inspection depth criteria.

Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resource Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Harold K. Chernoff.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: November 19, 2009.

Description of amendment request: The proposed change will correct identified non-conservatisms in Technical Specification 5.5.9 "Ventilation Filter Testing Program" by modifying the charcoal testing criteria to account for the 95% charcoal efficiency assumed for elemental iodine in the accident analyses for alternate source term.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change revises testing acceptance criteria for the existing Indian Point 2 Control Room filtration system in

Technical Specification (TS) 5.5.9 "Ventilation Filter Testing Program" to reflect current assumptions of iodine removal in accident dose calculations. The revised testing criteria does not add equipment or change the process for taking the test sample and only changes the test in the laboratory to be more restrictive. Therefore it cannot increase the probability of an accident occurring. The revised testing criteria is more stringent and therefore does not increase the consequences of an accident since it is more capable of mitigating control room doses and is consistent with existing analyses. Therefore the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change revises the testing acceptance criteria for the existing Control Room filtration system. The proposed change does not involve installation of new equipment, modification of existing equipment, or result in a change to the way that the equipment or facility is operated so that no new equipment failure modes are introduced. Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change revises the testing acceptance criteria for the existing Control Room filtration system. There is no change to the design requirements or the surveillance interval. The proposed change reflects the accident analysis dose calculation assumptions that assumed increased iodine removal. The factor of safety applied to the testing acceptance criteria remains the same. The new acceptance criterion is well within the system design capabilities. Therefore the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Nancy L. Salgado.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3 (IP3), Westchester County, New York

Date of amendment request: December 15, 2009, as supplemented on December 22, 2009, January 4, 2010, and January 11, 2010.

Description of amendment request: The proposed amendment would allow a one-time extension of the 72-hour completion time of Technical Specification (TS) 3.7.5, Condition B, Action B.1 "Restore AFW [auxiliary feedwater] train to OPERABLE status" by 34 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change revises the allowed outage time (AOT) for the steam driven Auxiliary Boiler Feedwater Pump (ABFP) on a one time basis. Revising the AOT is not an accident initiator since an ABFP is a mitigating system. Therefore the proposed changes do not increase the probability of an accident occurring. The proposed AOT change is a one time increase that will allow repairs without the transient of shutdown. The plant is designed for single failure and recognizes that inoperability for short periods does not cause a significant increase in the consequences of an accident. The one time increase in this outage time is compensated with measures to reduce the potential need for the ABFP and the effects of events that could require the pump. Therefore the increase does not significantly increase the consequences of an accident. Therefore the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change revises the allowed outage time for the ABFP on a one time basis. The proposed change does not involve installation of new equipment or modification of existing equipment, so no new equipment failure modes are introduced. The proposed revision is not a change to the way that the equipment or facility is operated or analyzed and no new accident initiators are created. Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The reduction in the margin of safety associated with continued IP3 operation with Auxiliary Boiler Feedwater (ABF) pump 32 out of service during a 34 hour period beyond current allowed outage time is represented by an increase of approximately 50 percent in the allowed outage time. This change in the margin of safety has been compensated for by specific compensatory measures to reduce the potential need for the pump and to address postulated events that could require the pump. The increase in core damage frequency (CDF) associated with continued IP3 operation with ABFP 32 out of service for a duration of 106 hours which represents a 34 hour period beyond the current allowed outage time is 3.9E–5 per reactor year (ry). This results in an incremental conditional core damage probability (ICCDP) of 4.8E–07, which is below the ICCDP guidance threshold of 5E–07 identified in NRC Inspection Manual Part 9900. The ICCDP includes risk due to external events due to seismic, fire, and flood. The increase in large early release frequency (LERF) was estimated as 4.2E–7/ry (including external events), which results in an incremental conditional large early release probability (ICLERP) of 5.1E–9. Therefore the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Nancy L. Salgado.

Entergy Nuclear Operations, Inc., Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating Unit Nos. 2 and 3, Westchester County, New York

Date of amendment request: November 17, 2009.

Description of amendment request: The proposed change will correct identified non-conservatisms in the calculation of Emergency Diesel Generator (EDG) air receiver pressure requirements for Technical Specification (TS) 3.8.3. In addition, the proposed change will modify the number of normal EDG starts the air receiver is capable of providing as listed in the Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change revises the pressure at which the Emergency Diesel [G]enerator (EDG) air receiver is required to be kept to meet surveillance requirements, revises the minimum EDG air receiver pressure required for one start of the EDG, and changes the number of normal starts in the air receiver. Revising the air receiver upper and lower pressure limits and reducing the number of starts in the air

receiver are not accident initiators since an EDG is a mitigating system. Therefore the proposed changes do not increase the probability of an accident occurring. The proposed changes will assure that each EDG is capable of starting consistent with assumed accident analyses. These analyses assume that an EDG starts the first time and accident analyses do not credit subsequent starts. The proposed new TS limits on the EDG air receiver will assure that air pressure is adequate to assure one attempt to start the EDG is available at the lower limit and will provide additional normal starts at the upper pressure established in the surveillance. Establishing acceptance criteria that replace non conservative criteria and assure the design bases is met assures the capability of equipment to mitigate accident conditions. Therefore the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change revises the pressure limit for the air receiver to initiate an alarm for low pressure, revises the lower pressure limit that must be maintained to assure that air is sufficient for at least one EDG start and revises the number of normal starts in the air receiver based on the revised calculations. The proposed change does not involve installation of new equipment or modification of existing equipment, so no new equipment failure modes are introduced. The proposed revision to the air receiver pressure limits and minimum air receiver EDG starts is also is [sic] not a change to the way that the equipment or facility is operated or analyzed and no new accident initiators are created.

Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The conduct of surveillance tests, the conditions for failure of those tests and the number of EDG starts in the air receiver are means of assuring that the equipment is capable of maintaining the margin of safety established in the safety analyses for the facility. The proposed change in the EDG surveillance test acceptance criteria is consistent with values assumed in existing safety analyses which assume one start attempt for each EDG. The requirement for a minimum air pressure in the EDG air start receiver assures that there will be adequate air to allow at least one EDG start attempt which meets the intent of the existing TS. The reduction in the number of starts maintained in the air receiver does not affect the margins in accident analyses for this reason and because an EDG failure to start would reduce the air pressure below that required for one start before the overcrank timer would lock out a further start attempt. Therefore the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Nancy L. Salgado.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: November 23, 2009.

Description of amendment request: The proposed amendment would modify the Technical Specification (TS) 5.5.7, Inservice Testing Program, by replacing the references from the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code to the current code of record, the ASME Operation and Maintenance Nuclear Power Plants Code (ASME OM Code), the code of record for the James A. FitzPatrick Nuclear Power Plant (JAF) Inservice Testing Program for Inservice Testing Program. This is an administrative amendment to maintain the TS current with the NRC accepted code of record for JAF.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS changes are non-technical, and are provided for consistency. There is no plant change involved, and thus, proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS changes are non-technical, *i.e.,* there is no plant change involved, and thus, do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed TS changes are non-technical, *i.e.,* there is no plant change involved. The changes are consistent with the regulations, and only update the TS to refer to the current code of reference. No design or safety margin is involved. Therefore, the proposed changes do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Branch Chief: Nancy L. Salgado.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, Somervell County, Texas

Date of amendment request: October 26, 2009.

Description of amendment request: The proposed change will revise Technical Specification (TS) 3.8.1 entitled "AC Sources—Operating" to extend, on a one-time basis, the allowable Completion Time (CT) of Required Action A.3 for one offsite circuit inoperable, from 72 hours to 14 days. This change is only applicable to startup transformer (ST) XST2 and will expire on March 1, 2011. This change is needed to allow sufficient time to make final terminations as part of a plant modification to facilitate connection of either ST XST2 or the spare ST to the Class 1E buses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will revise the CT for the loss of one offsite source from 72 hours to 14 days. The proposed one-time extension of the CT for the loss of one offsite power circuit does not significantly increase the probability of an accident previously evaluated. The startup transformers are not the initiator of any previously evaluated

accidents involving a loss of offsite power (LOOP).

The TS will continue to require equipment that will power safety related equipment necessary to perform any required safety function. The one-time extension of the CT to 14 days does not affect the design of the STs, the interface of the STs with other plant systems, the operating characteristic of the STs, or the reliability of the STs.

Per Regulatory Guide (RG) 1.177, the risk acceptance guideline presented in RG 1.174 shows that Unit 1 met all the risk acceptance guidelines for delta core damage frequency (CDF), delta large early release frequency (LERF), incremental conditional core damage probability (ICCDP), and incremental conditional large early release probability (ICLERP). [CPSES,] Unit 2 met the same risk acceptance guidelines of delta LERF and ICLERP; however, the delta CDF and ICCDP were above the acceptance value. Since the increase above the regulatory guidance is small, and the risk reduction measures quantitatively addressed, the values for Unit 2 delta CDF and ICCDP would fall below the regulatory guidance as well as decrease the other risk metrics for both Units.

The consequence of a LOOP event has been evaluated in the CPNPP [Comanche Peak Steam Electric Station] Final Safety Analysis Report [ ] and the Station Blackout evaluation. Increasing the CT for one offsite power source on a one-time basis from 72 hours to 14 days does not increase the consequences of a LOOP event nor change the evaluation of LOOP events.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not result in a change in the manner in which the electrical distribution subsystems provide plant protection. The proposed change will only affect the time allowed to restore the operability of the offsite power source through a startup transformer. The proposed change does not affect the configuration or operation of the plant. The proposed change to the CT will facilitate installation of a plant modification which will improve plant design and will eliminate the necessity to shut down both Units if [ST] XST2 fails or requires maintenance that goes beyond the current TS CT of 72 hours. This change will improve the long-term reliability of the 345kV [kiloVolt] offsite circuit STs which are common to both CPNPP Units.

There are no changes to the STs or the supporting systems operating characteristics or conditions. The change to the CT does not change any existing accident scenarios, nor create any new or different accident scenarios. In addition, the change does not impose any new or different requirements or eliminate any existing requirements. The change does not alter any of the assumptions made in the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not affect the acceptance criteria for any analyzed event nor is there a change to any safety limit. The proposed change does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. Neither the safety analyses nor the safety analysis acceptance criteria are affected by this change. The proposed change will not result in plant operation in a configuration outside the current design basis. The proposed activity only increases, for a one-time pre-planned occurrence, the period when the plant may operate with one offsite power source. The margin of safety is maintained by maintaining the ability to safely shut down the plant and remove residual heat.

Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Timothy P. Matthews, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: Michael T. Markley.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: November 4, 2009.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to: (1) Delete TS 4.0.5, which pertains to surveillance requirements (SRs) for inservice inspection (ISI) and inservice testing (IST) of American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code) Class 1, 2 and 3 components; (2) add a new TS for the IST Program to Section 6.0, "Administrative Controls," of the TSs; (3) change TSs that currently reference TS 4.0.5 to reference the IST Program or ISI Program, as applicable; and (4) revise TS 6.10.3.h to reflect the deletion of the ISI Program from the TSs. The new TS for the IST Program, TS 6.8.4.i, will indicate that the program will include testing frequencies applicable to the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code), replacing the current reference to Section XI of the ASME Code specified in TS 4.0.5. In addition, TS 6.8.4.i would revise the requirements, currently contained in TS 4.0.5, regarding the applicability of the surveillance interval extension provisions of SR 4.0.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise TS 4.0.5, Surveillance Requirements for Inservice Inspections and Testing of ASME Code Components, for consistency with 10 CFR 50.55a(f)(4) requirements regarding inservice testing of pumps and valves. The proposed change incorporates revisions to the ASME OM Code and clarifies testing frequency requirements for testing pumps and valves. The proposed change also relocates the ISI and IST Programs consistent with NUREG–1433. A commitment is made to maintain [Generic Letter (GL)] 88–01 inspection requirements in the ISI Program.

The proposed changes do not impact any accident initiators or analyzed events or assumed mitigation of accident or transient events. They do not involve the addition or removal of any equipment, or any design changes to the facility.

Therefore, the proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve a modification to the physical configuration of the plant (*i.e.,* no new equipment will be installed) or change in the methods governing normal plant operation. The proposed change will not impose any new or different requirements or introduce a new accident initiator, accident precursor, or malfunction mechanism. Therefore, this proposed change does not create the possibility of an accident of a different kind than previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes revise and relocate TS 4.0.5, Surveillance Requirements for Inservice Inspections and Testing of ASME Code Components, for consistency with (1) the requirements of 10 CFR 50.55a(f)(4) regarding the inservice testing of pumps and valves and (2) NUREG–1433. The proposed change updates references to the ASME OM Code, clarifies testing frequency requirements for testing pumps and valves, and relocates the IST Program to Section 6.0 of TS, and the ISI Program to a licensee controlled document. The safety function of the affected pumps and valves will be maintained; the programs will continue to be

implemented with the required regulations and codes. A commitment is made to maintain GL 88–01 inspection requirements in the ISI Program; there will be no change to these requirements.

Therefore, this proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Vincent Zabielski, PSEG Nuclear LLC–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: December 1, 2009.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to change the required frequency of testing control rod scram times from "at least once per 120 days of POWER OPERATION" to "at least once per 200 days of POWER OPERATION." This change is based on TS Task Force (TSTF) change traveler TSTF–460, Revision 0, "Control Rod Scram Time Testing Frequency." TSTF–460 has been approved generically by the Nuclear Regulatory Commission (NRC) for incorporation into the boiling water reactor (BWR) Standard TS (STS); NUREG–1433 (BWR/4) and NUREG–1434 (BWR/6). The NRC staff published a notice announcing the availability of this proposed TS change using the consolidated line item improvement process (CLIIP) in the **Federal Register** on August 23, 2004 (69 FR 51864). Since Hope Creek Generating Station has not adopted the STS, the licensee has proposed variations from the CLIIP to ensure consistency with NUREG–1433, Revision 3, "Standard Technical Specifications, General Electric Plants, BWR/4." The changes to align with NUREG–1433 involve the adoption of a revised control rod scram time test methodology and an establishment of a category of operable but "slow" control rods.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes extend the frequency and revise the evaluation methodology for control rod scram times, and identify a new category of "slow" control rods for assessing control rod operability. The frequency of control rod scram testing is not an initiator of any accident previously evaluated. The frequency of surveillance testing does not affect the ability to mitigate any accident previously evaluated, because the tested component is still required to be operable. The proposed evaluation methodology is consistent with industry approved methods and ensures control rod operability requirements for the number and distribution of operable, slow, and stuck control rods [and] continue[s] to satisfy scram reactivity rate assumptions used in plant safety analysis. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any [accident] previously evaluated?

Response: No.

The proposed changes do not involve any physical alteration of the plant (no new or different type of equipment is being installed) and do not involve a change in the design, normal configuration, or basic operation of the plant. The proposed changes do not introduce any new accident initiators. The proposed changes do not involve significant changes in the fundamental methods governing normal plant operation and do not require unusual or uncommon operator actions. The proposed changes provide assurance that the plant will not be operated in a mode or condition that violates the assumptions or initial conditions in the plant safety analyses and that [structures, systems and components] remain capable of performing their intended safety functions as assumed in the same analyses. Consequently, the response of the plant and the plant operator to postulated events will not be significantly different. Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. The proposed changes address control rod scram test performance and acceptance criteria as well as control rod operability requirements. The scram test acceptance criteria and control rod operability restrictions are based on industry approved methodology and will continue to ensure control rod scram design functions and reactivity insertion assumptions used in plant safety analyses continue to be protected. The proposed changes also extend the frequency of testing control rod scram times while at-power from 120 days to 200 days. The proposed change continues to test the control rod scram time to ensure the assumptions in the plant safety analysis are protected. The demonstrated reliability of the control rod scram function justifies the extension of the surveillance frequency. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Vincent Zabielski, PSEG Nuclear LLC–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Unit Nos. 1 and 2, Louisa County, Virginia

Date of amendment request: December 16, 2009.

Description of amendment request: The amendment would revise the Technical Specifications (TS) to adopt Nuclear Regulatory Commission (NRC)-approved Revision 2 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–427, "Allowance for Non Technical Specification Barrier Degradation on Support System Operability." The proposed amendment would modify the requirements for unavailable barriers by adding Limiting Condition for Operation 3.0.9.

The NRC staff published a notice of opportunity for comment in the **Federal Register** on June 2, 2006 (71 FR 32145), on possible amendments adopting TSTF–427, including a model safety evaluation and model no significant hazards consideration (NSHC) Determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** October 3, 2006 (71 FR 58444). The licensee affirmed the applicability of the following NSHC determination in its application dated December 16, 2009.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability of Consequences of an Accident Previously Evaluated

The proposed change allows a delay time for entering a supported system technical specification (TS) when the inoperability is due solely to an unavailable hazard barrier if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. Therefore, the probability of an accident previously evaluated is not significantly increased, if at all. The consequences of an accident while relying on the allowance provided by proposed LCO 3.0.9 are no different than the consequences of an accident while relying on the TS required actions in effect without the allowance provided by proposed LCO 3.0.9. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Allowing delay times for entering supported system TS when inoperability is due solely to an unavailable hazard barrier, if risk is assessed and managed, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change allows a delay time for entering a supported system TS when the inoperability is due solely to an unavailable barrier, if risk is assessed and managed. The postulated initiating events which may require a functional barrier are limited to those with low frequencies of occurrence, and the overall TS system safety function would still be available for the majority of anticipated challenges. The risk impact of the proposed TS changes was assessed following the three-tiered approach recommended in RG 1.177. A bounding risk assessment was performed to justify the proposed TS changes. This application of LCO 3.0.9 is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The net change to the margin of safety is insignificant as indicated by the anticipated low levels of associated risk (ICCDP [incremental conditional core damage probability] and ICLERP [incremental conditional large early release probability]) as shown in Table 1 of Section 3.1.1 in the Safety Evaluation [published in the **Federal Register** on October 3, 2006 (71 FR 58444)]. Therefore, this change does not involve a significant reduction in a margin of safety.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Gloria Kulesa.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 10, 2009.

Description of amendment request: The proposed changes will revise Technical Specification (TS) 3.1.7, "Rod Position Indication," TS 3.2.1, "Heat Flux Hot Channel Factor ($F_Q(Z)$) (F_Q Methodology)," TS 3.2.2, "Nuclear Enthalpy Rise Hot Channel Factor ($F^N\Delta H$), TS 3.2.4, "Quadrant Power Tilt Ratio (QPTR)," and TS 3.3.1, "Reactor Trip System (RTS) Instrumentation," for use of the Best Estimate Analyzer for Core Operations—Nuclear (BEACON) Power Distribution Monitoring System (PDMS) described in WCAP–12472–P–A, "BEACON Core Monitoring and Operations Support System," to perform power distribution surveillances.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The PDMS performs continuous core power distribution monitoring with data input from existing plant instrumentation. This system utilizes an NRC [U.S. Nuclear Regulatory Commission] approved Westinghouse proprietary computer code, *i.e.,* Best Estimate Analyzer for Core Operations—Nuclear (BEACON), to provide data reduction for incore flux maps, core parameter analysis, load follow operation simulation, and core prediction. The PDMS does not provide any protection or control system function. Fission product barriers are not impacted by these proposed changes. The proposed changes occurring with PDMS will not result in any additional challenges to plant equipment that could increase the probability of any previously evaluated accident. The changes associated with the PDMS do not affect plant systems such that their function in the control of radiological consequences is adversely affected. These proposed changes will therefore not affect the mitigation of the radiological consequences of any accident described in the Updated Safety Analysis Report (USAR).

Use of the PDMS supports maintaining the core power distribution within required limits. Further continuous on-line monitoring through the use of PDMS provides significantly more information about the power distributions present in the core than is currently available. This results in more time (*i.e.,* earlier determination of an adverse condition developing) for operator action prior to having an adverse condition develop that could lead to an accident condition or to unfavorable initial conditions for an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Other than use of the PDMS to monitor core power distribution, implementation of the PDMS and associated Technical Specification changes has no impact on plant operations or safety, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. The possibility for a new or different type of accident from any accident previously evaluated is not created since the changes associated with implementation of the PDMS do not result in a change to the design basis of any plant component or system. The evaluation of the effects of using the PDMS to monitor core power distribution parameters shows that all design standards and applicable safety criteria limits are met.

The proposed changes do not result in any event previously deemed incredible being made credible. Implementation of the PDMS will not result in any additional adverse condition and will not result in any increase in the challenges to safety systems. The cycle-specific variables required by the PDMS are calculated using NRC-approved methods. The Technical Specifications will continue to require operation within the required core operating limits, and appropriate actions will continue to be taken when or if limits are exceeded.

The proposed change, therefore, does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

No margin of safety is adversely affected by the implementation of the PDMS. The margins of safety provided by current Technical Specification requirements and limits remain unchanged, as the Technical

Specifications will continue to require operation within the core limits that are based on NRC-approved reload design methodologies. Appropriate measures exist to control the values of these cycle-specific limits, and appropriate actions will continue to be specified and taken for when limits are violated. Such actions remain unchanged.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: November 20, 2009.

Description of amendment request: The proposed changes will revise Technical Specification (TS) 3.8.1, "AC [Alternating Current] Sources—Operating," by adding a Note to the Required Actions B.3.1 and B.3.2 to indicate that the TS 3.8.1 Required Actions B.3.1 and B.3.2 are satisfied if the diesel generator (DG) became inoperable due to an inoperable support system, an independently testable component, or preplanned preventive maintenance or testing. The amendment also proposes to revise the Completion Times for Required Actions B.3.1 and B.3.2 to specify a Completion Time based on the discovery of an issue or failure of the DG.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

WCNOC [Wolf Creek Nuclear Operating Corporation] is proposing to add a Note to Required Actions B.3.1 and B.3.2 to indicate that the TS 3.8.1 Required Actions of B.3 are satisfied if the DG became inoperable due to an inoperable support system, an independently testable component or preplanned preventative maintenance or testing. The proposed change to the TS does not involve a change in the operational limits or physical design of the emergency power system. Diesel generator (DG) OPERABILITY and reliability will continue to be assured while minimizing the potential number of required DG starts. The DGs are not an initiator of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result for implementing the proposed change. The change does not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operations. The change does not alter assumptions made in the safety analysis for DG performance.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by this change. The proposed change will not result in operation in a configuration outside the design basis.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: August 26, 2009.

Brief description of amendment: The proposed amendment would revise the Technical Specification (TS) Section 6.5 that governs administrative controls of High Radiation Areas (HRA) to incorporate the HRA administrative controls contained within the Standard Technical Specifications, NUREG–1433, Revision 3.

Date of issuance: January 4, 2010.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 241.

Facility Operating License No. DPR–28: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** October 20, 2009 (74 FR 53778).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated January 4, 2010.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: March 22, 2009.

Brief description of amendments: The amendments revise the Technical Specification (TS) definition of the fully withdrawn position of the Rod Cluster Control Assemblies (RCCAs) to minimize localized RCCA wear. Previously, the fully withdrawn position for the RCCAs was defined in the TSs as being within the interval of 222 to 228 steps withdrawn (*i.e.,* steps above rod bottom). The approved change allows the fully withdrawn position to be defined as being within the interval of 222 to 230 steps withdrawn.

Date of issuance: January 12, 2010.

Effective date: As of the date of issuance. The Salem Unit No. 1 amendment shall be implemented prior to entering Mode 2 following refueling outage 1R20 (currently scheduled for spring 2010). The Salem Unit No. 2 amendment shall be implemented prior to entering Mode 2 following refueling outage 2R18 (currently scheduled for spring 2011).

Amendment Nos.: 292 and 276.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the TSs and the License.

Date of initial notice in ***Federal Register:*** June 2, 2009 (74 FR 26435).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 12, 2010.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 13th day of January 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–1315 Filed 1–25–10; 8:45 am]

BILLING CODE 7590–01–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 March 29, 2010.

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 Sheila Thomas, Office of Business Development, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sheila Thomas, mail to: Office of Business Development, 202–205–5852 *sheila.thomas@sba.gov* Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: This Form will be an Addendum to the 8(a) Annual Update Form (SBA Form 1450). The Section 8(a) Business Development (BD) Program was designed by Congress to provide socially and economically disadvantaged businesses with management and technical assistance to enhance their ability to compete in the American marketplace. The 8(a) Program utilizes various forms of assistance (e.g. procurement, financial, and management and technical assistance through 7(j) designated funds) to foster the business growth and development of 8(a) Program participants.

In an effort to refocus the 8(a) Business Development Program to emphasize "business development" the SBA developed the 8(a) Business Development Assessment Tool (BDAT) that will be completed by the 8(a) Participant as part of the Annual Review Update process. The BDAT is an electronic questionnaire (which consists of topics ranging from general business questions to legal land insurance, business planning, financing, marketing and business operations) that allows the 8(a) firm to answer a series of questions on a number of management and business skills. The 8(a) firm is then asked to rate their need for management and technical assistance in the specific skill area and a customized plan that addresses the firms' stated needs is created.

Title: "8(a) Annual Update Addendum."

Description of Respondents: Annually.

Form Numbers: N/A.

Annual Responses: 7,644.

Annual Burden: 15,288.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2010–1445 Filed 1–25–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal Advisory Committee meetings.

SUMMARY: The SBA is issuing this notice to announce the location, date, time and agenda for the first quarter meetings of the National Small Business Development Center (SBDC) Advisory Board.

DATES: The meetings for the fourth quarter will be held on the following dates: Tuesday, January 19, 2010 at 1 p.m. EST. Tuesday, February 16, 2010 at 1 p.m. EST. Tuesday, March 16, 2010 at 1 p.m. EST.

ADDRESSES: These meetings will be held via conference call.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), SBA announces the meetings of the National SBDC Advisory Board. This Board provides advice and counsel to the SBA Administrator and Associate Administrator for Small Business Development Centers.

The purpose of these meetings is to discuss following issues pertaining to the SBDC Advisory Board:

—ASBDC Spring Meeting
—White Paper Issues
—SBA Update
—Member Roundtable

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to be a listening participant must contact Alanna Falcone by fax or e-mail. Her contact information is Alanna Falcone, Program Analyst, 409 Third Street, SW., Washington, DC 20416, Phone, 202–619–1612, Fax 202–481–0134, e-mail, *alanna.falcone@sba.gov.*

Additionally, if you need accommodations because of a disability or require additional information, please contact Alanna Falcone at the information above.

Meaghan Burdick,

Acting Committee Management Officer.

[FR Doc. 2010–1447 Filed 1–25–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61374; File No. SR–Phlx–2010–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Routing Fees

January 19, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 31, 2009, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to to [sic] adopt fees governing pricing for Exchange members using the Phlx XL II system,[3] for routing standardized equity and index options to away markets for execution. These fees would replace the current Options Routing Pass-Through Fees, which the Exchange proposes to eliminate.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative effective for trades settling on or after January 4, 2010.

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 recoup costs that the Exchange incurs for routing and executing orders in equity and index options to certain better-priced away markets.

In May, 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC ("NOS"), a member of the Exchange, as the Exchange's exclusive order router.[4] NOS is utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets.

Currently, the Exchange's Fee Schedule includes fees for executions of options orders entered into the Exchange's enhanced electronic trading platform for options, Phlx XL II, that are routed by NOS to away markets ("Phlx XL II Options Routing Pass-Through Fees"). The fees are dependent on: (i) The away market's fee schedule, and (ii) the type of option (options traded in increments of $0.01 ("penny options"), equity, index, ETF or HLDRS options). The Phlx XL II Options Routing Pass-Through Fees currently are not applicable to firms and market makers because their orders are not routed by Phlx XL II. The Exchange passes through the actual transaction fees to Exchange members (including surcharges and license fees, if applicable) which are assessed by away markets plus the clearing fees for the execution of orders routed from the Phlx XL II system.[5] In August, 2009, the Exchange determined to waive these routing fees on a pilot basis.[6] The pilot expires on December 31, 2009.[7]

The Exchange proposes to eliminate entirely all current Phlx XL II Options Routing Pass-Through Fees and replace those fees with a Routing Fee of $0.50 per contract side for orders routed to NYSE Arca, Inc. ("NYSEArca") in penny options for execution. There will be no routing fees for orders routed to away markets other than NYSEArca in penny options. Also, there will be no cost for executing orders at away markets in non-penny classes.

The Exchange's total cost of routing penny options to NYSE Arca is significantly higher than the cost of routing penny options to the other five U.S. options markets. Based on its review of statistical and financial data, the Exchange believes that it regularly incurs the vast majority of its total monthly transaction and clearing costs in several symbols that are routed from the Exchange to NYSEArca. The Exchange further believes that some order flow providers, rather than sending orders directly to NYSE Arca for execution, route orders to the Exchange when it is not the National Best Bid/Offer ("NBBO") so that the Exchange will route their orders to NYSE Arca. In such a situation, the Exchange incurs the cost of such routing, whereas the initiating order flow provider would incur the cost if it sent the order directly. Accordingly, the Exchange is proposing this fee to recoup transaction and clearing costs that it incurs in situations where orders in penny options are sent to the Exchange when it is not the NBBO, and those orders are routed by the Exchange to NYSEArca. The Exchange believes that the routing fees proposed will enable the Exchange to recover these costs.

This proposal would assess members and member organizations a Routing Fee of $0.50 per contract side for orders in penny options that are routed through NOS and executed at NYSEArca. The Exchange believes that its proposal will allow the Exchange to recover costs it incurs as a result of routing option orders to NYSEArca.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For a complete description of Phlx XL II, *see* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The instant proposed fees will apply only to options entered into, and routed by, the Phlx XL II system.

[4] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[5] *See* PHLX XL II Options Routing Pass-Through Fee located at: *http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.*

[6] *See* Securities Exchange Act Release No. 60461 (August 7, 2009), 74 FR 41472 (August 17, 2009) (SR–Phlx–2009–66).

[7] The pilot applies to transactions settling on or after July 1, 2009 and extended through December 31, 2009. The Exchange does not plan to renew this pilot.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(4) of the Act [9] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members because all members and member organizations would be assessed the same fee for penny options routed to and executed on NYSEArca. Further, the Exchange's proposal to eliminate the current Phlx XL II Options Routing Pass-Through Fees and instead assess the $0.50 Routing Fee for orders routed to NYSEArca would assist the Exchange in recouping costs incurred in executing orders for its members in penny classes at NYSEArca. The Exchange believes that this fee would enable it to recoup the majority of costs associated with routing customer orders on behalf of its members.

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.

As an initial matter, all members of the Exchange will be subject to the same fee for routing customer orders to NYSE Arca for execution.

The Exchange's system will continue to route customer orders to better-priced away markets, including NYSEArca.[10] The proposed fees are intended to recoup the unusually high cost of such routing, and will not have the effect of burdening competition. Currently, when the Exchange properly routes customer orders to NYSEArca, the burden falls on the Exchange to pay the high transaction and clearing costs associated therewith, while its competitor benefits wholly from the Exchange ensuring that it will not trade through its competitors' markets. As stated above, the costs associated with routing customer orders to NYSEArca for execution are burdensome. The proposed fee change is intended to remove that burden from the Exchange, will not have any effect at all on the Exchange's system in properly routing customer orders to all markets disseminating the NBBO, including NYSEArca, and thus is not unfairly discriminatory.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and paragraph (f)(2) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–2010–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–01. 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,[13] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing 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–2010–01 and should be submitted on or before February 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1432 Filed 1–25–10; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] For a detailed description of the Exchange's Phlx XL II system, *see* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61365; File No. SR–NYSEArca–2009–114]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to Listing of Grail McDonnell Fixed Income ETFs

January 15, 2010.

On December 16, 2009, NYSE Arca, Inc. ("NYSE Arca" or "Exchange"), through its wholly owned subsidiary, NYSE Arca Equities, Inc. ("NYSE Arca Equities"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the Grail McDonnell Intermediate Municipal Bond ETF and the Grail McDonnell Core Taxable Bond ETF (each an "ETF" and, collectively, the "ETFs") under NYSE Arca Equities Rule 8.600 (Managed Fund Shares). The proposed rule change was published in the **Federal Register** on December 30,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

I. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing of Managed Fund Shares. Each ETF will be an actively managed exchange-traded fund each of which is a series of Grail Advisors ETF Trust ("Trust"). The Shares will be offered by the Trust.[4] Grail Advisors, LLC is each Fund's investment manager ("Manager"). McDonnell Investment Management, LLC ("McDonnell" or "Sub-Adviser") serves as each ETF's sub-adviser. The Bank of New York Mellon Corporation is the administrator, Fund accountant, transfer agent and custodian for the ETFs. ALPS Distributors, Inc. serves as the distributor of Creation Units for each ETF on an agency basis.

The Exchange states that the Shares will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600(d) applicable to Managed Fund Shares[5] and that the Shares will comply with Rule 10A–3 under the Act,[6] as provided by NYSE Arca Equities Rule 5.3. Additional information regarding the Trust, each of the ETFs, the Shares, the ETFs' investment objectives, strategies, policies, and restrictions, risks, fees and expenses, creation and redemption procedures, portfolio holdings and policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.[7]

II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the Exchange's rules be 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. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[11] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line, and the Portfolio Indicative Value ("PIV") will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. In addition, the Trust will make available on its Web site on each business day, before the commencement of trading in Shares in the Core Trading Session, the Disclosed Portfolio that will form the basis for the calculation of the NAV, which will be determined at the end of the business day. The Trust's Web site will also include additional quantitative information updated on a daily basis relating to the prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),[12] and a calculation of the premium and discount of the Bid/Ask Price against the NAV and data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Information regarding the market price and volume of the Shares will be continually available on a real-time basis throughout the day on broker' computer screens and other electronic services, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial sections of newspapers.

The Commission further believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[13] Additionally, if it becomes aware that the NAV or the Disclosed Portfolio is not disseminated daily to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market participants.[14] Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[15] The Exchange represents that the Adviser is affiliated with a broker-dealer, Grail Securities LLC, and has implemented a "fire wall" between it and its broker-dealer affiliate with respect to access to information concerning the composition and/or changes to each of the ETF's portfolio. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public

[3] *See* Securities Exchange Act Release No. 61227 (September 3, 2009), 74 FR 69175 ("Notice").

[4] The Trust is a Delaware statutory trust that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act"). *See* Registration Statement on Form N–1A for the Trust filed with the Commission on October 5, 2009 (File Nos. 333–148082 and 811–22154) ("Registration Statement").

[5] The Exchange states that a minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange, and the Exchange will obtain a representation from the issuer of the Shares that the net asset value ("NAV") per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. *See* Notice, *supra* note 3.

[6] 17 CFR 240.10A–3.

[7] *See supra* notes 3 and 4.

[8] 15 U.S.C. 78f.

[9] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[12] The Bid/Ask Price of each ETF is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the NAV. The records relating to Bid/Ask Prices will be retained by each ETF and its service providers.

[13] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[14] *See* NYSE Arca Equities Rule 8.600(d)(2)(D).

[15] *Id.* Trading in the Shares may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

information regarding the actual components of each of the portfolios.[16]

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600(d).

(2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

(3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(4) The Funds will be in compliance with Rule 10A–3 under the Act.

(5) The Funds will not invest in non-U.S. equity securities.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

III. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[17] for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the **Federal Register**. The Commission notes that it has approved the listing and trading on the Exchange of shares of other actively managed exchange-traded funds based on a portfolio of securities, the characteristics of which are similar to those to be invested by the Funds.[18] The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Managed Fund Shares.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NYSEArca–2009–114), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1430 Filed 1–25–10; 8:45 am]

BILLING CODE 8011–01–P

[16] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[17] 15 U.S.C. 78s(b)(2).

[18] *See, e.g.,* Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (approving the listing and trading of shares of five actively-managed fixed income funds of the PIMCO ETF Trust).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61381, File No. SR–MSRB–2009–18]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change Consisting of Amendments to Rule G–37 (Political Contributions and Prohibitions on Municipal Securities Business) and Rule G–8 (Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers)

January 20, 2010.

On December 4, 2009, the Municipal Securities Rulemaking Board ("MSRB"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of proposed amendments to Rule G–37 (political contributions and prohibitions on municipal securities business) and Rule G–8 (books and records to be made by brokers, dealers and municipal securities dealers). The proposed rule change was published for comment in the **Federal Register** on December 18, 2009.[3] The Commission received no comment letters. This order approves the proposed rule change.

The proposed amendments to Rule G–37 would require the public disclosure of contributions to bond ballot campaigns made by dealers, municipal finance professionals ("MFPs"), their political action committees ("PACs") and non-MFP executive officers on MSRB Form G–37. Dealers would be required to report on revised Form G–37 the official name of each bond ballot campaign receiving contributions during such calendar quarter, the jurisdiction (including city/county/state or political subdivision) by or for which municipal securities, if approved, would be issued, the contribution amount made and the category of contributor. The proposal would provide a *de minimis* exception from the reporting of contributions on Form G–37 made by an MFP or non-MFP executive officer to a bond ballot campaign for a ballot initiative with respect to which such person is entitled to vote if all contributions by such person to such bond ballot campaign, in total, do not exceed $250 per ballot initiative. The amendments would parallel the existing disclosure requirements for contributions to issuer officials and state and local political parties. Such amendments would not, however, provide for a ban on municipal securities business as a result of contributions to bond ballot campaigns.

The proposed amendments to Rule G–8 would require dealers to create and maintain records of the non-*de minimis* contributions to bond ballot campaigns that would be required to be disclosed on Form G–37 under the proposed amendments to Rule G–37. The MSRB requested that the proposed rule change become effective on, and would apply solely to contributions made on or after, the first business Monday at least five business days after Commission approval. A full description of the proposal is contained in the Commission's Notice.

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB [4] and, in particular, the requirements of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61155 (Dec. 11, 2009), 74 FR 67285 (December 18, 2009) ("Commission's Notice").

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Section 15B(b)(2)(C) of the Act[5] and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[6] In particular, the Commission finds that the proposed rule change is consistent with the Act because it will protect investors and the public interest and will assist with preventing fraudulent and manipulative acts and practices by allowing the public and regulators to monitor dealer contributions to bond ballot campaigns, thereby further reducing the opportunity for pay-to-play practices in the municipal securities market.

The proposed amendments will become effective on the date requested by the MSRB.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–MSRB–2009–18), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1431 Filed 1–25–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61378; File No. SR–NYSEArca–2010–01]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by NYSE Arca, Inc. Amending Its Fee Schedule

January 19, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on January 7, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule to remove obsolete language pertaining to its expired Linkage Pilot Program and introduce a new Royalty Fee for Nasdaq 100 Index Options ("NDX") and Mini-NDX Options ("MNX"). A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to delete obsolete references pertaining to the Linkage Pilot Program. The Linkage Pilot Program expired on December 31, 2009. Accordingly, the Exchange proposes to remove the "Linkage Fees" portion of its fee schedule as well as endnote 7, 11 and obsolete portions of endnote 12. Furthermore, the Exchange proposes to renumber subsequent endnotes accordingly.

Additionally, the Exchange plans to commence trading of options on the Nasdaq 100 Index ("NDX") and Mini-NDX ("MNX"). In order to trade options on NDX and MNX, the Exchange has entered into a licensing agreement with the Nasdaq Stock Market ("Nasdaq"), the exchange that created and maintains both indexes. As a part of this agreement, NYSE Arca will pay a fee to Nasdaq on every contract traded on the Exchange. Effective with this filing, the Exchange will assess a $0.22 Royalty Fee for transactions in NDX and MNX options. Accordingly, the $0.22 rate will be applied to the "Take" side of electronic Penny Pilot executions. All non-electronic Penny Pilot executions and all non-Penny Pilot executions will pay the $0.22 rate when there is a firm, broker dealer or market maker executing the transaction.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[3] in general, and Section 6(b)(4),[4] in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members. Under this proposal, all similarly situated Exchange participants will be charged the same reasonable dues, fees and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[5] of the Act and subparagraph (f)(2) of Rule 19b–4[6] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[5] 15 U.S.C. 78o–4(b)(2)(C).

[6] *Id.*

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

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–NYSEArca–2010–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2010–01 and should be submitted on or before February 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1433 Filed 1–25–10; 8:45 am]

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[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61387; File No. SR–ISE–2010–03]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

January 20, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 8, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by ISE under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b-4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

(a) *Purpose*—In SR–ISE–2009–26, the Exchange adopted the term "Singly Listed ETFs" to identify those ETF products that are listed only on ISE and for which the Exchange charges a fee of $0.18 per contract for customer transactions. Currently, the First Trust ISE Water ETF ("FIW") is the only such ETF listed on the Exchange's fee schedule. On January 8, 2010, ISE began listing options on the Claymore China Technology ETF ("CQQQ"). As of the date of this filing, CQQQ is singly listed on ISE. The Exchange therefore proposes to charge a fee of $0.18 per contract for customer transactions in options on CQQQ. The Exchange also proposes to charge a Payment for Order Flow ("PFOF") fee for this product and three other products that were previously not charged a PFOF fee. Specifically, in addition to charging a PFOF fee for transactions in options on CQQQ, the Exchange also proposes to charge a PFOF fee for transactions in options on FIW, the Mini-FTSE 100 Index ("UKX") and the NASADAQ Q–50 Index ("NXTQ"). The Exchange currently charges a fee of $0.18 per contract for customer transactions in options on FIW, UKX and NXTQ as all three products are singly listed on ISE.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[7] and Rule 19b–4(f)(2)[8] thereunder. At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–ISE–2010–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2010–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.[9] All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2010–03 and should be submitted on or before February 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1442 Filed 1–25–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A). [sic]

[8] 17 CFR 240.19b–4(f)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61373; File No. SR–BX–2010–003]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Amend Rule 2810 To Reflect Changes To Corresponding FINRA Rule

January 15, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 5, 2010, NASDAQ OMX BX. Inc. (the "Exchange" or "BX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[9] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to amend BX Rule 2810 to reflect recent changes to a corresponding rule of the Financial Industry Regulatory Authority ("FINRA"). BX will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com*, at the Exchange's principal office, 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

Many of BX's rules are based on rules of FINRA (formerly the National Association of Securities Dealers ("NASD")). During 2008, FINRA embarked on an extended process of moving rules formerly designated as "NASD Rules" into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, BX also proposes to initiate a process of modifying its rulebook to ensure that BX rules corresponding to FINRA rules continue to mirror them as closely as practicable. In some cases, it will not be possible for the rule numbers of BX rules to mirror corresponding FINRA rules, because existing or planned BX rules make use of those numbers. However, wherever possible, BX plans to update its rules to reflect changes to corresponding FINRA rules.

This filing addresses BX Rule 2810, which formerly corresponded to NASD 2810, and which addresses underwriting terms and arrangements in public offerings of direct participation programs and unlisted real estate

investments trusts (collectively, "Investment Programs"). In SR–FINRA–2009–016,[4] FINRA re-designated NASD Rule 2810 as FINRA Rule 2310 with no material change. FINRA Rule 2310 requires that members participating in a public offering of an Investment Program meet certain requirements regarding underwriting compensation, fees and expenses, perform due diligence on the Investment Program, follow specific guidelines on suitability, and adhere to limits on non-cash compensation.

BX is adopting the new FINRA rule in full. Because the BX Rules currently contain a Rule 2310, it will re-designate Rule 2810 as BX Rule 2310A, so as to closely correspond to the new FINRA rule number.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Sections [sic] 6(b)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform BX Rule 2810 to recent changes made to a corresponding FINRA rule, to promote application of consistent regulatory standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[4] Securities Exchange Act Release No. 59987 (May 27, 2009), 74 FR 106 [sic] (June 4, 2009) (SR–FINRA–2009–016).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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–BX–2010–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2010–003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing 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–BX–2010–003 and should be submitted on or before February 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1440 Filed 1–25–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61370; File No. SR–NYSEArca–2010–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. Amending Rule 9.1 Sharing in Accounts, Extent Permissible

January 15, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 08, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its sharing in accounts rule to harmonize its requirements with the Financial Industry Regulatory Authority

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

("FINRA"). The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Rule 17d–2 under the Securities Exchange Act of 1934, the American Stock Exchange, LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, LLC, Financial Industry Regulatory Authority, Inc., The NASDAQ Stock Market LLC, the New York Stock Exchange, LLC, NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc. (collectively the "Options Self Regulatory Council"), entered into an agreement dated June 5, 2008 (the "17d–2 Agreement") to allocate regulatory responsibility for common rules. The Exchange is currently in the process of recertifying this 17d–2 Agreement for 2009.

In furtherance of the 17d–2 agreement, and in order to maintain substantial similarity with FINRA rules, the Exchange proposes to delete NYSE Arca Rule 9.1(f), Sharing Profits—Losses, in its entirety, and replace it with the language of FINRA 2150(c), Sharing in Accounts; Extent Permissible. FINRA Rule 2150(c) contains the same general prohibition as NYSE Arca Rule 9.1(f), but with additional limited exceptions. The Exchange proposes to add those limited exceptions in order to harmonize its rule with the FINRA rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[4] of the Act, in general, and furthers the objectives of Section 6(b)(5),[5] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest. Specifically, the changes proposed herein, by harmonizing NYSE Arca rules with FINRA rules, provide NYSE Arca Members with a clearer and more comprehensive regulatory scheme. The Exchange further notes that the changes proposed herein are neither novel nor controversial and are modeled on existing FINRA rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6)(iii) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission has determined that waiving the 30-day operative delay of the Exchange's proposal is consistent with the protection of investors and the public interest because such waiver will allow the Exchange to help expedite the recertification of the 17d–2 agreement between NYSE Arca and FINRA.[12] Therefore, the Commission designates the proposal as operative upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change 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–NYSEArca–2010–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–02. 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

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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 the pre-filing requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–02 and should be submitted on or before February 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1443 Filed 1–25–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61372; File No. SR–Phlx–2010–04]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Extension of Sponsored Access Pilot Program

January 15, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 2010, NASDAQ OMX PHLX, Inc. ("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 to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its sponsored access rule for a pilot period ending on March 15, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* 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 attract additional business by extending its sponsored access rule, which is similar to that of other exchanges. During the previous pilot program, very few member organizations availed themselves of the program, but the Exchange seeks to make it available for an additional pilot period expiring March 15, 2010.

A Sponsored Participant is a non-member of the Exchange, such as an institutional investor, that gains access to the Exchange and trades under a Sponsoring Member's execution and clearing identity pursuant to a sponsorship arrangement between such non-member and a member organization. Specifically, the Exchange proposes to permit Sponsored Participants to be sponsored by Sponsoring Member Organizations, and thereby access the Exchange, subject to certain requirements. These requirements are intended to confirm that the Sponsored Participant is required to and had procedures in place to comply with Exchange rules, and that the Sponsoring Member Organization takes responsibility for the Sponsored Participant's activity on the Exchange.

First, the Sponsored Participant and its Sponsoring Member Organization must have entered into and maintained an Access Agreement with the Exchange. The Sponsoring Member Organization must designate the Sponsored Participant by name in an addendum to the Access Agreement.

Second, there must be a Sponsored Participant Agreement between the Sponsoring Member Organization and the Sponsored Participant that contains the following sponsorship provisions, enumerated in full in Rule 1094(b)(ii):

(i) The orders of the Sponsored Participant are binding in all respects on the Sponsoring Member Organization;

(ii) The Sponsoring Member Organization is responsible for the actions of the Sponsored Participant;

(iii) In addition to the Sponsoring Member Organization being required to comply with the Exchange Certificate of Incorporation, By-laws, Rules and procedures of the Exchange, the Sponsored Participant shall do so as if such Sponsored Participant were an Exchange member organization;

(iv) The Sponsored Participant shall maintain, keep current and provide to the Sponsoring Member Organization a list of individuals authorized to obtain access to the Exchange on behalf of the Sponsored Participant;

(v) The Sponsored Participant shall familiarize its authorized individuals with all of the Sponsored Participant's obligations under this Rule and will assure that they receive appropriate training prior to any use or access to the Exchange;

(vi) The Sponsored Participant may not permit anyone other than authorized individuals to use or obtain access to the Exchange;[3]

(vii) The Sponsored Participant shall take reasonable security precautions to prevent unauthorized use or access to the Exchange, including unauthorized entry of information into the Exchange, and agrees that it is responsible for any and all orders, trades and other messages and instructions entered, transmitted or received under identifiers, passwords and security codes of authorized individuals, and for the trading and other consequences thereof;

(viii) The Sponsored Participant acknowledges its responsibility to

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] If the Exchange determines that an authorized individual has caused a Member Organization to violate the Exchange's Rules, the Exchange could direct the Member Organization to suspend or withdraw the person's status as an authorized individual.

establish adequate procedures and controls that permit it to effectively monitor its employees', agents' and Participants' use and access to the Exchange for compliance with the terms of this agreement;

(ix) The Sponsored Participant shall pay when due all amounts, if any, payable to Sponsoring Member Organization, the Exchange, or any other third parties that arise from the Sponsored Participant's access to and use of the Exchange. Such amounts include, but are not limited to applicable exchange and regulatory fees.

Third, the Sponsoring Member Organization must provide the Exchange with a Sponsored Participant Addendum to its Access Agreement acknowledging its responsibility for the orders, executions and actions of its Sponsored Participant at issue.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(5) of the Act [5] 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 helping market participants seeking access to a marketplace.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) [7] thereunder.

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[8] However, Rule 19b–4(f)(6)(iii) [9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange filed the proposed rule change on January 11, 2010. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[10]

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–2010–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–04 and should be submitted on or before February 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–1429 Filed 1–25–10; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. Phlx has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] *Id.*

[10] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding the Review of a Petition To Withdraw the Eligibility of Certain Sleeping Bags Under the GSP Program

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of comments.

SUMMARY: The Office of the United States Trade Representative (USTR) has accepted for review a petition to remove certain sleeping bags (HTS9404.30.80) from the list of products eligible for duty-free treatment under the GSP program. This notice sets forth the schedule for submitting comments and review of the petition.

FOR FURTHER INFORMATION CONTACT: Tameka Cooper, GSP Program, Office of

the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508. The telephone number is (202) 395–6971, the fax number is (202) 395–2961, and the e-mail address is *Tameka_Cooper@ustr.eop.gov.*

DATES: The schedule for reviewing the petition for the withdrawal of duty-free treatment under the GSP program for certain sleeping bags (HTS9404.30.80) is set forth below. Notice of any changes to the schedule will be given in the **Federal Register.**

February 12, 2010—Comments on the petition must be submitted by 5 p.m.

April 2010—The USITC is scheduled to provide a report providing advice on the potential impacts on U.S. industry and consumers with respect to the petition.

SUPPLEMENTARY INFORMATION: The GSP program provides for the duty-free importation of eligible articles when imported from designated beneficiary developing countries. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the "1974 Act"), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

The GSP Subcommittee of the Trade Policy Staff Committee (TPSC) has accepted for review a petition to withdraw duty-free treatment under the GSP for certain sleeping bags (HTS9404.30.80). Additional information regarding this petition is provided in "Petition Accepted for Review—Sleeping Bags" at *http://www.regulations.gov,* docket number USTR–2010–0004. Acceptance of a petition for review does not indicate any opinion with respect to the disposition on the merits of the petition. Acceptance indicates only that the petition has been found eligible for review and that such review will take place.

Opportunities for Public Comment

The GSP Subcommittee of the TPSC invites written comments in support of or in opposition to the petition to withdraw duty-free treatment under the GSP for certain sleeping bags in addition to comments on the advice provided by the U.S. International Trade Commission.

Requirements for Submissions and Inspection of Comments

The GSP regulations (15 CFR Part 2007) set forth the kind information that should be included in written comments. Submissions should comply with the GSP regulations, except as modified below. All submissions should include the case number and eight-digit HTSUS subheading number as shown in the "Petition Accepted for Review—Sleeping Bags" available at: *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/current-review-1* and in *www.regulations.gov,* docket number USTR–2010–0004 All non-business confidential comments will be available for review at *www.regulations.gov,* docket number USTR–2010–0004.

Submissions in response to this notice (including written comments and all business confidential submissions), must be submitted electronically by the relevant deadline listed above using *www.regulations.gov.*, docket number USTR–2010–0004. Instructions for submitting business confidential versions are provided below. Hand-delivered submissions will not be accepted. Submissions must be submitted in English to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, by the applicable deadlines set forth in this notice.

To make a submission using *www.regulations.gov,* enter docket number USTR–2010–0004 on the home page and click "Search." The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting "Notices" under "Document Type". Locate the reference to this notice by selecting "Notices" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a Comment". (For further information on using the *www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking "How to Use This Site" on the left side of the home page.)

The *www.regulations.gov* Web site offers the option of providing comments by filling in a "Type Comment and Upload File" field or by attaching a document. USTR prefers for comments to be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comment and Upload File" field.

Comments must be in English, with the total submission not to exceed 30 single-spaced standard letter-size pages in 12-point type, including attachments. Any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Any person or party making a submission is strongly advised to review the GSP regulations and GSP Guidebook (available at: *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp/gsp-program-inf*).

Business Confidential Submissions

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such, the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, "Business Confidential" should be included in the "Type comment & Upload file" field. Anyone submitting a comment containing business confidential information must also submit as a separate submission a non-confidential version of the confidential submission, indicating where confidential information has been redacted. The non-confidential summary will be placed in the docket and open to public inspection.

Marideth Sandler,

Executive Director, Generalized System of Preferences (GSP) Program, and Chair, GSP Subcommittee, Office of the U.S. Trade Representative.

[FR Doc. 2010–1325 Filed 1–25–10; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2009–0421]

Pipeline Safety: Leak Detection on Hazardous Liquid Pipelines

AGENCY: Pipeline and Hazardous Materials Safety Administration; DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is issuing this Advisory Bulletin to advise and remind hazardous liquid pipeline operators of the importance of prompt and effective leak detection capability in protecting public safety and the environment.

FOR FURTHER INFORMATION CONTACT: Alan Mayberry by phone at 202–366–5124 or by e-mail at *alan.mayberry@dot.gov* regarding the subject matter of this Advisory Bulletin,

or the Dockets Unit, 202–366–4453, for copies of this Advisory Bulletin or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov.* General information about the PHMSA Office of Pipeline Safety (OPS) can be obtained by accessing OPS's Internet home page at *http://www.phmsa.dot.gov/pipeline.*

SUPPLEMENTARY INFORMATION:

Background

Pipeline leak detection is one of the many layers of protection in PHMSA's approach to protecting people and the environment. The federal hazardous liquid pipeline safety regulations require pipeline operators to deploy a comprehensive set of safety measures to protect the public and the environment including an effective means of identifying and responding to hazardous liquid pipeline leaks at the earliest possible time. Pipeline operators are continuously improving the cumulative performance of these interconnected layers of protections, including advances in leak detection systems. These protections include, but are not limited to: Customized leak detection technology deployment; periodic risk-based assessment and defect repair prioritized by environmental and safety consequences; corrosion management; pipeline right-of-way surveillance; public awareness activities resulting in enhanced citizen leak condition recognition and response; emergency preparedness and coordinated response, including ongoing liaison efforts with emergency responders; and a review and incorporation of lessons learned from accident analyses and investigations.

Recently, the National Transportation Safety Board (NTSB) issued a safety study on pipeline Supervisory Control and Data Acquisition (SCADA) systems (NTSB/SS–05/02). The number of hazardous liquid accidents investigated by the NTSB in which leaks went undetected after indications of a leak on the SCADA interface was the impetus for this study. The NTSB examined 13 hazardous liquid pipeline accidents that they investigated from April 1992 to October 2004. The conclusions made by the NTSB in the study reflected the importance of monitoring systems, promptly recognizing leak incidents, and minimizing damage with quick response. PHMSA encourages all hazardous liquid pipeline operators to review the safety study which is available on the NTSB webpage.

Under current regulations, all hazardous liquid pipeline operators are required to periodically patrol their pipeline right-of-ways. This effort is performed principally to guard against third-party activity that has the potential to damage the pipeline, and is also performed to detect very small leaks not detected by other means. Often, the leaking product has impacted vegetation or has pooled on the surface, and therefore leaves visual cues. Conducting these surveillance activities is very important, but they are not sufficient on their own to address all aspects of leak detection. Hazardous liquid pipeline operators are also expected to track product movement along the pipelines in order to ensure that all product going into the pipeline arrives at interim storage points, and eventually reaches its destination. This traditional and basic method of leak detection by tracking product movement is essential to an understanding of line balance. Relatively short pipelines, operating with a single source and a single destination, can usually perform this process rather simply, if adequate and timely information is made available. With these more simple pipelines, the line balance technique for leak detection can often be performed with manual calculations, without the need of a computerized process. Those pipeline operators with longer and more complex systems, with multiple sources and/or destinations, are more dependent on computerized processes to perform a thorough product tracking resulting in a leak detection process. The more complex a pipeline operation, especially when carrying numerous products through batch operations, the greater the need for a sophisticated leak detection process.

Currently, there are 421 hazardous liquid pipeline operators. Two hundred and twenty of the operators have pipelines less than 50 miles long, 96 operators have pipelines 50 to 250 miles long, and 105 operators have pipelines longer than 250 miles in length. Many of the operators with higher mileage have configured their pipelines into networks, sometimes collecting product from multiple sources and delivering product to multiple destinations, making the leak detection process complex. At the same time, we recognize that in some cases the engineering analysis performed on point-to-point pipeline systems has determined that installing a computer-based leak detection system does not offer substantial improvements in leak detection capability beyond that of a simple manual line balance calculation process.

Under 49 CFR 195.444, pipeline operators using a computer-based leak detection system are required to comply with API RP 1130. Pipeline operators who do not employ computerized leak detection still need to safely and effectively perform the basic process of monitoring flow and pressure to detect large pipeline breaks. The line balance processes incorporating SCADA or other technology are geared to find less obvious failures such as partial line breaks and smaller leaks not apparent in general flow and pressure monitoring. When a pipeline operator has determined or selected to use a traditional line balance process through manual calculation, it is PHMSA's expectation that these operators would have systems configured and staffed in such a manner as to routinely, safely and accurately perform this manual calculation process at a maximum of one-hour intervals. The appropriate interval should be determined by engineering review, but should not exceed one hour. This hourly process is especially important any time product is flowing; but since leaks can occur at any time, all unexplained meter movements or pressure changes should be promptly investigated to minimize potential leak durations even if a line segment is shutdown. In addition, operators need to ensure open and regular communication between all active source and delivery points along the pipeline, either through verbal communication or through the use of SCADA or other similar technology.

Operators of point-to-point hazardous liquid pipeline systems are obligated to have a prompt and effective means of detecting and responding to leaks. In order to ensure the safe and environmentally sound operation of their hazardous liquid pipelines, the operating plans and procedures required by the pipeline safety regulations should include the performance of an engineering analysis to determine if a computerized leak detection system is necessary and appropriate. If the analysis determines that a computerized leak detection system is unnecessary, the operator should perform a line balance calculation and review process at no greater than one-hour intervals whenever product is flowing through the line, and monitor for pressure changes, meter movement and tank level changes even when the line is not flowing. As part of the recordkeeping requirements under current regulations, operators must retain documentation from any related engineering analyses for the computerized leak detection and line balance considerations to demonstrate the thoroughness of review during an inspection.

II. Advisory Bulletin ADB–10–01

To: Owners or Operators of Hazardous Liquid Pipelines.

Subject: Leak Detection on Hazardous Liquid Pipelines.

Advisory: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is advising and reminding hazardous liquid pipeline operators of the importance of prompt and effective leak detection capability in protecting public safety and the environment. In order to ensure the safe and environmentally sound operation of their hazardous liquid pipelines, the operating plans and procedures required by the pipeline safety regulations should include the performance of an engineering analysis to determine if a computer-based leak detection system is necessary to improve leak detection performance and line balance processes. If an operator that does not have a computer-based leak detection system performs an engineering analysis and determines that such a system would not improve leak detection performance and line balance processes, the operator should perform the periodic line balance calculation process outlined herein and take any other necessary actions required to ensure public safety and protect the environment.

Issued in Washington, DC, on January 19, 2010.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2010–1497 Filed 1–25–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2009–0377]

Pipeline Safety: Request To Modify Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice; Reopening of Comment Period on the Kern River Gas Transmission Company's Request to Modify Condition 35 of a Previously Issued Special Permit.

SUMMARY: PHMSA is reopening the comment period for its Federal Register Notice issued on November 17, 2009 (73 FR 59342), that gave notice of a request from the Kern River Gas Transmission Company (Kern River), for modification of an existing special permit, PHMSA–2007–29078, granted to the company on November 8, 2008. Kern River seeks modification of Condition 35 of the special permit, which concerns the external coating on its gas pipeline.

DATES: Submit any comments regarding this special permit modification request by February 9, 2010.

ADDRESSES: Comments should reference the docket number for this special permit and may be submitted in the following ways:

- *E-Gov Web Site: http://www.Regulations.gov.* This site allows the public to enter comments on any Federal Register notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* DOT Docket Management System; U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the docket number, PHMSA–2007–29078, at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov. Note:* Comments are posted without changes or edits to *http://www.regulations.gov,* including any personal information provided.

Privacy Act Statement: Anyone can search the electronic form of comments received in response to any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: *General:* Kay McIver by telephone at (202) 366–0113; or, e-mail at *kay.mciver@dot.gov.*

Technical: Steve Nanney by telephone at (713) 272–2855; or, e-mail at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA is reopening the comment period for 14 days from date of publication to allow for public review of documents recently added to the docket.

Authority: 49 U.S.C. 60118(c)(1) and 49 CFR 1.53.

Issued in Washington, DC, on January 19, 2010.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2010–1472 Filed 1–25–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2010–0016]

Pipeline Safety: Requests for Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice.

SUMMARY: PHMSA is publishing this notice of special permit requests we have received from two pipeline operators, seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. This notice seeks public comments on these requests, including comments on any safety or environmental impacts. At the conclusion of the 30-day comment period, PHMSA will evaluate each request and determine whether to grant or deny a special permit.

DATES: Submit any comments regarding these special permit requests by February 25, 2010.

ADDRESSES: Comments should reference the docket numbers for the specific special permit requests and may be submitted in the following ways:

- *E-Gov Web Site: http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* DOT Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please

submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.* **Note:** Comments are posted without changes or edits to *http://www.Regulations.gov,* including any personal information provided.

Privacy Act Statement: Anyone can search the electronic form of comments received in response to any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: *General:* Kay McIver by telephone at (202) 366–0113; or, e-mail at *kay.mciver@dot.gov.*

Technical: Steve Nanney by telephone at (713) 272–2855; or, e-mail at *steve.nanney@dot.gov.*

SUPPLEMENTARY INFORMATION: PHMSA has received these requests for special permits from pipeline operators who seek relief from compliance with certain pipeline safety regulations. Each request is filed in the Federal Docket Management System (FDMS) and has been assigned a separate docket number in the FDMS. Each docket includes any technical analysis or other supporting documentation provided by the requestor, including a description of any alternative measures the operator proposes to take in lieu of compliance with the current regulations. We invite interested persons to participate by reviewing these special permit requests at *http://www.Regulations.gov,* and by submitting written comments, data or other views. Please include any comments on potential environmental impacts that may result if these special permits are granted.

Before acting on these special permit requests, PHMSA will evaluate all comments received on or before the comments closing date. Comments will be evaluated after this date if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny a request and what terms and conditions are appropriate.

PHMSA has received the following two special permit requests:

Docket No.	Requester	Regulation(s)	Nature of special permit
PHMSA–2009–0390	Colonial Pipeline Company	49 CFR 195.310(b)	Colonial Pipeline Company requests relief from certain recordkeeping requirements for two segments of Line 01. Colonial Pipeline Company operates 1,049 miles of 40-inch and 36-inch diameter steel pipeline that runs from Houston, Texas to Greensboro, North Carolina. The segments of request include approximately 66 miles of 40-inch pipeline in LA, and 10 miles of 36-inch pipeline in GA, for which Colonial can no longer locate certain pressure recording charts and calibration data from the original construction hydrostatic testing of the pipeline. These original construction hydrostatic tests were conducted more than thirty years ago. The application is for a special permit to waive the requirement to have retained the pressure recording charts and certain other pressure test data.
PHMSA–2009–0407	Union Oil of California (Chevron).	49 CFR 195.452(h)(3) and 195.452(h)(4)(iii).	Union Oil of California requests a waiver to the 180-day repair requirement for a riser which is part of the Anna platform "A" pipeline. The Anna platform "A" pipeline terminates at the Bruce platform riser located in Kenai Borough, Alaska on the Cook Inlet, a navigable waterway. The Bruce platform riser, for which the special permit is sought, is a 12-inch OD riser, constructed of .500 inch wall thickness, ASTM A53 grade B material with coating of unknown origin. The riser was constructed in 1967. Union Oil of California conducted an in-line inspection in 2008. The results demonstrated a 64% wall loss. Union Oil of California requests a waiver from repairs due to the inaccessibility of the repair location, the MOP, and the remaining 36% original wall thickness. Union Oil of California proposes alternative measures to mitigate the wall thickness loss. These measures include re-inspection of the 12-inch pipeline riser location in 2010.

Authority: 49 U.S.C. 60118(c)(1) and 49 CFR 1.53.

Issued in Washington, DC, on January 19, 2010.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2010–1470 Filed 1–25–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 23, 2010.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Committee will be held Tuesday, February 23, 2010, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 15, 2010.

Linda Rivera,

Senior Program Analyst, Taxpayer Advocacy Panel.

[FR Doc. 2010–1121 Filed 1–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, February 8, 2010.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227 or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Monday, February 8, 2010, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Sallie Chavez. For more information please contact Ms. Chavez at 1–888–912–1227 or 954–423–7979, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 15, 2010.

Linda Rivera,

Senior Program Analyst, Taxpayer Advocacy Panel.

[FR Doc. 2010–1124 Filed 1–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 9, 2010.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, February 9, 2010, at 11:00 a.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 15, 2010.

Linda Rivera,

Senior Program Analyst, Taxpayer Advocacy Panel.

[FR Doc. 2010–1126 Filed 1–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 17, 2010.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, February 17, 2010, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Mrs. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 15, 2010.

Linda Rivera,

Senior Program Analyst, Taxpayer Advocacy Panel.

[FR Doc. 2010–1127 Filed 1–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 16, 2010.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, February 16, 2010, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 15, 2010.

Linda Rivera,

Senior Program Analyst, Taxpayer Advocacy Panel.

[FR Doc. 2010–1130 Filed 1–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 17, 2010.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, February 17, 2010, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 15, 2010.

Linda Rivera,

Senior Program Analyst, Taxpayer Advocacy Panel.

[FR Doc. 2010–1128 Filed 1–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications/MLI Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications/MLI Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, February 11, 2010.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications/MLI Project Committee will be held Thursday, February 11, 2010, at 1 p.m., Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information, please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 15, 2010.

Linda Rivera,

Senior Program Analyst, Taxpayer Advocacy Panel.

[FR Doc. 2010–1133 Filed 1–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 9, 2010.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227 or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Issue Committee will be held Tuesday, February 9, 2010, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited

conference lines, notification of intent to participate must be made with Sallie Chavez. For more information, please contact Ms. Chavez at 1–888–912–1227 or 954–423–7979, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: January 15, 2010.

Linda Rivera,

Senior Program Analyst, Taxpayer Advocacy Panel.

[FR Doc. 2010–1131 Filed 1–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 16, 2010.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, February 16, 2010, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 15, 2010.

Linda Rivera,

Senior Program Analyst, Taxpayer Advocacy Panel.

[FR Doc. 2010–1125 Filed 1–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Notice Improvement Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, February 10, 2010.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be held Wednesday, February 10, 2010, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information, please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 15, 2010.

Linda Rivera,

Senior Program Analyst, Taxpayer Advocacy Panel.

[FR Doc. 2010–1123 Filed 1–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, February 25, 2010.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Project Committee will be held Thursday, February 25, 2010, at 9 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more tinformation please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 15, 2010.

Linda Rivera,

Senior Program Analyst, Taxpayer Advocacy Panel.

[FR Doc. 2010–1129 Filed 1–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned

Income Tax Credit Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be Wednesday, February 24, 2010.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be held Wednesday, February 24, 2010, at 1 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 15, 2010.

Linda Rivera,

Senior Program Analyst, Taxpayer Advocacy Panel.

[FR Doc. 2010–1132 Filed 1–25–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, February 23, 2010.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Tuesday, February 23, 2010, at 3 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: January 15, 2010.

Linda Rivera,

Senior Program Analyst, Taxpayer Advocacy Panel.

[FR Doc. 2010–1134 Filed 1–25–10; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
January 26, 2010

Part II

Commodity Futures Trading Commission

17 CFR Parts 1, 20 and 151

Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 20 and 151

RIN 3038–AC85

Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("CFTC" or "Commission") is proposing to implement speculative position limits for futures and option contracts in certain energy commodities. The Commodity Exchange Act of 1936 ("CEA" or "Act") gives the Commission the authority to establish limits on positions to diminish, eliminate or prevent excessive speculation causing sudden or unreasonable fluctuations in the price of a commodity, or unwarranted changes in the price of a commodity. In addition to identifying the affected energy contracts and the position limits that would apply to them, the notice of proposed rulemaking includes provisions relating to exemptions from the position limits for *bona fide* hedging transactions and for certain swap dealer risk management transactions. The notice of proposed rulemaking also sets out an application process that would apply to swap dealers seeking a risk management exemption from the position limits, as well as related definitions and reporting requirements. In addition, the notice of proposed rulemaking includes provisions regarding the aggregation of positions under common ownership for the purpose of applying the limits.

DATES: Comments must be received on or before April 26, 2010.

ADDRESSES: Comments should be submitted to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Comments also may be sent by facsimile to (202) 418–5521, or by electronic mail to *secretary@cftc.gov.* Reference should be made to "Proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations." Comments may also be submitted by connecting to the Federal eRulemaking Portal at *http://www.regulations.gov* and following comment submission instructions.

FOR FURTHER INFORMATION CONTACT: Stephen Sherrod, Acting Director of Surveillance, (202) 418–5452, *ssherrod@cftc.gov,* David P. Van Wagner, Chief Counsel, (202) 418–5481, *dvanwagner@cftc.gov,* Donald Heitman, Senior Special Counsel, (202) 418–5041, *dheitman@cftc.gov,* or Bruce Fekrat, Special Counsel, (202) 418–5578, *bfekrat@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, facsimile number (202) 418–5527.

SUPPLEMENTARY INFORMATION:

I. Overview

The majority of futures and options trading on energy commodities in the United States occurs on the New York Mercantile Exchange ("NYMEX"), a designated contract market ("DCM") that operates as part of the CME Group.[1] Energy commodity trading also takes place on the Intercontinental Exchange ("ICE"), an Atlanta-based exchange that operates as an exempt commercial market ("ECM") and is, as of July 2009, a registered entity with respect to its Henry Financial LD1 Fixed Price natural gas contract.[2] NYMEX currently lists physically-delivered and cash-settled futures contracts (and options on such futures contracts) in crude oil, natural gas, gasoline and heating oil. ICE lists a cash-settled look-alike contract on natural gas, and options thereon, that settles directly to the settlement price of NYMEX's physically-delivered natural gas futures contract.[3]

ICE's Henry Financial LD1 Fixed Price natural gas contract and virtually all NYMEX energy contracts are currently subject to exchange-set spot-month speculative position limits that are in effect for the last three days of trading of the respective contracts. Under an exchange's speculative position limit rules, no trader, whether commercial or noncommercial, may exceed a specified limit unless the trader has requested and received an exemption from the exchange. Outside of a contract's spot month, these energy contracts are subject to exchange all-months-combined and single-month position accountability rules. Under an exchange's position accountability rules, once a trader exceeds an accountability level in terms of outstanding contracts held, the exchange has the right to request supporting justification from the trader for the size of its position, and may order a trader to reduce or not increase its positions further.

As described in detail in section VI of this release, the Commission is proposing to impose all-months-combined, single-month, and spot-month speculative position limits for contracts based on a defined set of energy commodities. Broadly described, the Commission's proposal, for non-spot-month positions, would apply exchange-specific speculative position limits to a set of economically similar contracts that settle in the same manner. In addition, the Commission is proposing to implement and enforce aggregate non-spot-month speculative position limits that would apply across registered entities that list substantially similar energy contracts. As discussed in the Paperwork Reduction Act section of this notice of proposed rulemaking, should the proposed regulations be adopted, the Commission estimates that the total number of traders with significant positions that could be affected by the proposed regulations would be approximately ten.

Particular data concerning the distribution of speculative traders in a market and an analysis of market conditions and variables, including open interest, can support a range of acceptable speculative position limit requirements. The Commission, in structuring the speculative position

[1] The CME Group is the parent company of four DCMs: NYMEX, the Chicago Board of Trade ("CBOT"), the Chicago Mercantile Exchange ("CME"), and the Commodity Exchange ("COMEX").

[2] Under section 2(h)(7) of the Act, ECM contracts that have been determined by the Commission to be significant price discovery contracts ("SPDCs") are subject to Commission regulation. 7 U.S.C. 2(h)(7). ECMs listing SPDCs ("ECM–SPDCs") are also deemed to be registered entities with self-regulatory responsibilities with respect to such contracts. To date, ICE's Henry Financial LD1 Fixed Price natural gas contract is the first and only ECM contract to have been determined by the Commission to be a SPDC under section 2(h)(7) of the Act. 74 FR 37988 (July 30, 2009).

[3] US-based traders also enter into various energy contracts listed by the ICE Futures Europe Exchange ("ICE Futures Europe"), a London-based exchange. These energy contracts include futures on West Texas Intermediate (WTI) light sweet crude oil, a New York Harbor heating oil futures contract and a New York Harbor unleaded gasoline blendstock futures contract. All of the listed contracts directly cash-settle to the price of NYMEX futures contracts that are physically-settled. ICE Futures Europe is a foreign board of trade ("FBOT") and, unlike NYMEX and ICE, is not registered in any capacity with the Commission. Instead, ICE Futures Europe and its predecessor, the International Petroleum Exchange, have operated in the US since 1999 pursuant to Commission staff no-action relief. CFTC Staff Letter No. 99–69 (November 12, 1999). Since 2008, ICE Futures Europe's no-action relief has been conditioned on, among other things, the requirement that the Exchange implement position limit requirements for its NYMEX-linked contracts that are comparable to the position limits that NYMEX applies to its contracts. CFTC Staff Letter No. 08–09 (June 17, 2008); CFTC Staff Letter No. 08–10 (July 3, 2008). Generally, comparable position limits for FBOT contracts that link to CFTC-regulated contracts serve to ensure the integrity of prices for CFTC-regulated contracts.

limit framework as proposed, has considered its recent and historical actions in setting position limits, its continuous oversight of exchange-set speculative position limit and accountability rules, its experience in administering Commission-set speculative position limits [4] and its observations of energy commodity market conditions and developments, particularly during the past four years. The Commission notes that the proposed Federal speculative position limits on energy contracts would be in addition to, and not a substitute for, a reporting market's existing speculative position limit and accountability requirements. Reporting markets, defined in Commission regulation 15.00 to include DCMs and ECM–SPDCs, are self-regulatory organizations with an independent responsibility for adopting and implementing appropriate position limit and accountability rules.

This notice of proposed rulemaking does not propose regulations that would classify and treat differently passive long-only positions. The Commission does, however, in section VIII of this notice, solicit comment on specific issues related to large, passive long-only positions. In particular, the Commission solicits comments on how to identify and define such positions and whether such positions should, including collectively, be limited in any way.

II. Statutory Background

Speculative position limits have been identified as an effective regulatory tool for mitigating the potential for market disruptions that could result from uncontrolled speculative trading. Section 4a(a) of the Act, 7 U.S.C. 6a(a), which in significant part retains language that was initially adopted in 1936, provides that:

> Excessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets or derivatives transaction execution facilities, or on electronic trading facilities with respect to a significant price discovery contract causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity.

Accordingly, section 4a(a) of the Act provides the Commission with the following authority:

> For the purpose of diminishing, eliminating, or preventing such burden, the Commission shall, from time to time * * * proclaim and fix such limits on the amounts of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market or derivatives transaction execution facility, or on an electronic trading facility with respect to a significant price discovery contract, as the Commission finds are necessary to diminish, eliminate, or prevent such burden.

Amendments introduced to the Act by the Futures Trading Act of 1982 supplemented this longstanding statutory framework for Commission-set Federal speculative position limits by explicitly acknowledging the role of the exchanges in setting their own speculative position limits.[5] The 1982 legislation also gave the Commission, under section 4a(5) of the Act, the authority to directly enforce violations of exchange-set, Commission-approved speculative position limits in addition to position limits established directly by the Commission through orders or regulations.[6] Thus, since 1982, the Act's framework explicitly anticipates the concurrent application of Commission and exchange-set speculative position limits. The concurrent application of limits is particularly consistent with an exchange's close knowledge of trading activity on that facility and the Commission's greater capacity for monitoring trading and implementing remedial measures across interconnected commodity futures and option markets.

The Commodity Futures Modernization Act of 2000 ("CFMA") [7] introduced substantial changes to the CEA. Broadly described, the CFMA established a principles-based approach to regulating the futures markets, allowed for the implementation of exchange rules through a certification process without requiring the exchanges to obtain prior Commission approval, and delineated specific designation criteria and core principles with which a DCM must comply to receive and maintain designation. Among these, Core Principle 5 in section 5(d) of the Act provides:

> Position Limitations or Accountability—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.

Most recently the CEA was amended by the CFTC Reauthorization Act of 2008.[8] The 2008 legislation amended the CEA by, among other things, adding core principles in new section 2(h)(7) governing SPDCs traded on electronic trading facilities operating in reliance on the exemption in section 2(h)(3) of the Act.[9] The 2008 legislation amended the Act to impose certain self-regulatory responsibilities on ECM–SPDCs through core principles, as did the CFMA with respect to DCMs, including a core principle that requires such facilities to "adopt, where necessary and appropriate, position limitations or position accountability for speculators in significant price discovery contracts * * *" [10] The 2008 legislation also amended section 4a(e) of the Act to incorporate references to ECM–SPDCs, thereby assuring that violation of an ECM–SPDC's position limits, regardless of whether such position limits have been approved by or certified to the Commission, would constitute a violation of the Act that the Commission could independently enforce.

As mentioned above, the CFMA generally replaced the Act's exchange rule approval process with a certification process. On a practical level, this shift has tended to reduce the Commission's ability to more directly shape the specific requirements of exchange-set speculative position limit and accountability rules through approving such rules prior to implementation. In light of this, the Commission's broad authority to independently set position limits under CEA section 4a(a) could be viewed as an increasingly important enabling provision that allows the Commission to take the initiative in acting, when appropriate, to bolster market confidence and curb or prevent excessive speculation that may cause sudden, unwarranted, or unreasonable fluctuations in commodity prices.

III. Federal Speculative Position Limits

A. Historical Background

From the earliest days of federal regulation of the futures markets, Congress made it clear that unchecked speculative positions, even without intent to manipulate the market, can cause price disturbances.[11] To protect

[4] The Commission sets Federal speculative position limits for certain agricultural commodities enumerated in section 1a(4) of the Act. *See* 17 CFR 150.2.

[5] Futures Trading Act of 1982, Pub. L. No. 97–444, 96 Stat. 2299–30 (1983).

[6] Section 4a(5) has since been redesignated as section 4a(e) of the Act. 7 U.S.C. 4a(e).

[7] Commodity Futures Modernization Act of 2000, Appendix E of Public Law No. 106–554, 114 Stat. 2763 (2000).

[8] Food, Conservation and Energy Act of 2008, Public Law No. 110–246, 122 Stat. 1624 (June 18, 2008).

[9] 7 U.S.C. 2(h)(3)–(7).

[10] 7 U.S.C. 2(h)(7)(C)(ii)(IV).

[11] The Congressional finding that excessive speculation can have detrimental consequences even without manipulative intent is consistent with the series of studies and reports made to Congress

Continued

markets from the adverse consequences associated with large speculative positions, Congress expressly authorized the Commodity Exchange Commission ("CEC") [12] to impose speculative position limits prophylactically.[13] The Congressional endorsement of the Commission's prophylactic use of position limits rendered unnecessary a specific finding that an undue burden on interstate commerce had actually occurred. Additionally, Congress closely restricted exemptions from position limits to *bona fide* hedging transactions, initially defined as sales or purchases of futures contracts offset by sales or purchases of the same cash commodity.

In December of 1938, the CEC promulgated the first Federal speculative position limits for futures contracts in grains (then defined as wheat, corn, oats, barley, flaxseed, grain sorghums and rye) after finding that large speculative positions tended to cause sudden and unreasonable fluctuations and changes in the price of grain.[14] At that time, the CEC did not impose limits in the other commodities enumerated in the 1936 Act.

Over the following years, Federal position limits were extended to various other commodities enumerated in the Act. However, no uniform approach regarding speculative position limits was applied to those enumerated commodities. In some cases (*e.g.,* soybeans), a commodity added to the Act's list of enumerated commodities was also added to the roster of commodities subject to Federal speculative position limits. In other cases (*e.g.,* livestock products, butter, and wool), commodities added to the list of enumerated commodities in the Act never became subject to Federal position limits.

In 1974, Congress overhauled the CEA to create the CFTC and simultaneously expanded the new agency's jurisdictional scope beyond the enumerated agricultural commodities to include futures contracts in any commodity. In expanding the CFTC's jurisdiction, Congress reiterated a fundamental precept underlying the Act, namely, to minimize or prevent the harmful effect of uncontrolled speculation.[15] When the Commission came into existence in April 1975, "various contract markets [had] voluntarily placed speculative position limits on 23 contracts involving 17 commodities." [16] At that time, "position limits were in effect for almost all actively traded commodities then under regulation and the limits for positions in about one half of these actively traded commodities had been specified by the contract markets." [17] Initially, the Commission retained the position limits enacted by the CEC, as then in effect, but did not establish position limits for any additional commodities.[18] In the years immediately following, the Commission implemented a few relatively minor changes to position limit regulations, but undertook no significant expansion of Federal speculative position limits.

After the silver futures market crisis during late 1979 to early 1980, commonly referred to as "the Hunt Brothers silver manipulation," [19] the Commission concluded that "[t]he recent events in silver * * * suggest that the capacity of any futures market to absorb large positions in an orderly manner is not unlimited." [20] Accordingly, in 1981 the Commission adopted regulation 1.61, which required all exchanges to adopt and submit for Commission approval speculative position limits in active futures markets for which no exchange or Commission limits were then in effect.[21] Although regulation 1.61 directed the exchanges to implement position limit rules, the pre-CFMA exchange rule approval process, on a practical level, gave the Commission the ability to shape the requirements of exchange-set position limit rules as measures that guarded against excessive speculation in accordance with the purposes and findings of section 4a(a) of the Act.

The next significant development occurred in 1986, when the Commission undertook a comprehensive review of speculative position limit policies, including position limit levels. During the Commission's 1986 reauthorization, the CFTC's Congressional authorizing committees suggested that this subject should be addressed. The Report of the House Agriculture Committee stated:

> [T]he Committee believes that, given the changes in the nature of these markets and the influx of new market participants over the last decade, the Commission should reexamine the current levels of speculative position limits with a view toward elimination of unnecessary impediments to expanded market use.[22]

Subsequently, the Commission reviewed its Federal speculative position limit framework and, in October 1987, adopted final amendments that raised some of the Federal speculative position limits and revised the general structure of the Federal speculative position limit regulations.[23] The amendments introduced in 1987 retained the then current spot-month and individual month position limits but increased the all-months-combined position limits. The revised limits, which had historically been set on a generic commodity basis, established position limits for each contract "according to the individual characteristics of that contract market," particularly "the distribution of speculative position sizes in recent years and recent levels of open interest." [24] In response to a petition by the CBOT, the Commission also established position limits for CBOT soybean oil and soybean meal contracts, which had been subject solely to exchange-set position limits, to provide "consistency with all other agricultural commodities traded at the CBOT." [25]

In 1992, the Commission issued proposed regulations adhering to the principle that speculative position limits should be formulaically adjusted based upon increases in the size of a contract's open interest (in addition to the traditional standard of distribution of speculative traders in a market).[26]

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urging the adoption of measures to restrict speculative trading notwithstanding the absence of "the deliberate purpose of manipulating the market." *See e.g.,* Fluctuations in Wheat Futures, 69th Cong., 1st Sess., Senate Document No. 135 (June 28, 1926).

[12] The CEC is the predecessor of the Commodity Exchange Authority, which is, in turn, the predecessor of the Commission.

[13] Requiring a specific demonstration of the need for position limits is contrary to section 4a(a) of the Act, which provides that the Commission shall set position limits from time to time, among other things, to prevent excessive speculation. 7 U.S.C. 4a(a).

[14] 3 FR 3145 (December 24, 1938).

[15] "The fundamental purpose of the measure is to insure fair practice and honest dealing on the commodity exchanges and to provide a measure of control over those forms of speculative activity which too often demoralize the markets to the injury of producers and consumers and the exchanges themselves." S. Rep. No. 93–1131, 93rd Cong., 2d. Sess. (1974).

[16] 45 FR 79831 (December 2, 1980).

[17] *Id.* at 79832. "Commodity Exchange Authority regulations included limits for wheat, corn, oats, soybeans, cotton, eggs and potatoes. Exchange rules included limits for live cattle, feeder cattle, live hogs, frozen pork bellies, soybean oil, soybean meal, and grain sorghums." (*Id.* n.1)

[18] Pursuant to section 4l of the Commodity Futures Trading Commission Act of 1974, all regulations previously adopted by the Commodity Exchange Authority continued in full force and effect, to the extent they were not inconsistent with the Act, as amended, unless or until terminated, modified or suspended by the Commission. Sec. 205, 88 Stat. 1397 (effective July 18, 1975).

[19] *See, In re* Nelson Bunker Hunt *et al.,* CFTC Docket No. 85–12.

[20] 45 FR 79831, at 79833 (December 2, 1980).

[21] 46 FR 50938 (October 16, 1981).

[22] H.R. Rep. No. 624, 99th Cong., 2d Sess., at 4 (1986).

[23] 52 FR 38914 (October 20, 1987).

[24] *Id.* at 38917, 38919.

[25] Petition for rulemaking of the CBOT, dated July 24, 1986, cited in 52 FR 6814 (March 5, 1987).

[26] 57 FR 12766 (April 13, 1992).

The formula was thereafter "routinely applied … as a matter of administrative practice when reviewing proposed exchange speculative position limits under Commission [regulation] 1.61." [27]

During this same time frame, the Commission began a process that led to the adoption of position accountability rules for contracts that were subject to exchange-set speculative position limits. Beginning in 1991, the Commission approved several exchange rules establishing position accountability provisions in lieu of position limits for certain contracts exhibiting significant trading volume and open interest, a highly liquid underlying cash market and ready opportunities for arbitrage between the cash and futures markets.[28] An exchange's position accountability rules, as opposed to position limits that bar traders from acquiring contracts that quantitatively exceed a specific number of outstanding contracts, require persons holding a certain number of open contracts to report the nature of their positions, trading strategy, and hedging needs to the exchange, upon the exchange's request.

In 1999, the Commission simplified and reorganized its speculative position limit regulations to consolidate requirements for both Commission-set limits and exchange-set limits under regulation 1.61 in part 150 of the Commission's regulations. Regulation 150.5(e), currently, and as initially adopted in 1999, establishes a "trader accountability exemption" [29] and generally codifies the position accountability conditions that initially were imposed as a matter of administrative practice beginning in 1991.[30]

The reorganized rules also included new regulation 150.5(c), which codified the Commission's 1992 formula for calculating Federal speculative position limits based upon open interest, and applied it to exchanges for their use in calculating the levels of exchange-imposed numerical speculative position limits.[31] The formula provided for "combined futures and option speculative position limits for both a single month and for all-months-combined at the level of 10 percent of open interest up to an open interest of 25,000 contracts, with a marginal increase of 2.5% thereafter." [32] In initially proposing to use this formula, the Commission noted that:

> [I]ts large trader data indicates that limits based on open interest as described above should accommodate the normal course of speculative positions in agricultural markets. The levels derived using this method of analysis generally are consistent with the largest exchange-set speculative limits approved by the Commission under Rule 1.61 for contract markets in agricultural commodities at corresponding levels of open interest. However, the Commission, based on its surveillance experience and monitoring of exchange and Federal speculative position limits, is satisfied that the levels indicated by this methodology, although *near the outer bounds* of the levels which have been approved previously, nevertheless will achieve the prophylactic intent of Section [4a] of the Act and Commission Rule 1.61, thereunder [emphasis supplied].[33]

The Commission also emphasized that particular data can result in a range of acceptable speculative position limits, and that based on its experience overseeing exchange-set speculative limits and its direct administration of the Federal limits establishing "a single-month and all-month limits on futures positions combined with option positions on a delta-equivalent basis of no more than ten percent of the combined markets' open interest for contracts with combined open interest below 25,000" was within the range of acceptable speculative position limits.[34] For those markets with combined average open interest greater than 25,000 contracts, the Commission proposed a marginal increase of 2.5% after noting that "the size of the largest individual positions in a market do not continue to grow in proportion with increases in the overall open interest of the market."[35]

As noted above, Core Principle 5, introduced to the Act in 2000 by the CFMA, requires DCMs to implement position limits or position accountability rules for speculators "where necessary and appropriate." In 2001, the Commission established Acceptable Practices for complying with Core Principle 5, set out in Appendix B to part 38 of the Commission's regulations.[36] The Acceptable Practices specifically reference part 150 of the Commission's regulations as providing guidance on how to comply with the requirements of the Core Principle.[37] The CFMA, however, did not change the treatment of the enumerated agricultural commodities, which remained subject to Federal speculative position limits.

In 2005, the Commission increased the all-months-combined Federal speculative position limits and reset the single-month levels to roughly approximate the existing numerical relationship between all-months-combined and single-month levels (*i.e.,* arriving at the single-month limits by setting them at about two-thirds of the relevant all-months-combined limits), based generally on the 1992 open interest formula (as incorporated into regulation 150.5(e)).[38]

In 2008, Congress, in response to high prices and volatility in the energy markets and concerns regarding excessive speculation on unregulated energy exchanges, including ECMs, adopted the CFTC Reauthorization Act of 2008 and amended two CEA provisions aimed at curbing possible manipulation and excessive speculation

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[27] 63 FR 38525 (July 17, 1998).

[28] *See, e.g.,* 56 FR 51687 (October 15, 1991) and 57 FR 29064 (June 30, 1992).

[29] 64 FR 24038, at 24048 (May 5, 1999).

[30] Regulation 150.5(e) provides that, for futures and option contracts that have been listed for trading for at least 12 months, an exchange may submit a position accountability rule, in lieu of a numerical limit, as follows:

"(1) For futures and option contracts on a financial instrument or product having an average open interest of 50,000 contracts and an average daily trading volume of 100,000 contracts and a very highly liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange;

(2) For futures and option contracts on a financial instrument or product or on an intangible commodity having an average month-end open interest of 50,000 and an average daily volume of 25,000 contracts and a highly liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange and to consent to halt increasing further a trader's positions if so ordered by the exchange;

(3) For futures and option contracts on a tangible commodity, including but not limited to metals, energy products, or international soft agricultural products having an average month-end open interest of 50,000 contracts and an average daily volume of 5,000 contracts and a liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange and to consent to halt increasing further a trader's positions if so ordered by the exchange, *provided, however,* such contract markets are not exempt from the requirement of paragraphs (b) or (c) that they adopt an exchange bylaw, regulation or resolution setting a spot month speculative position limit with a level no greater than one quarter of the estimated spot-month deliverable supply * * *" 17 CFR 150.5(e).

Notably, the Commission's concerns regarding spot-month limits were eventually mirrored by the CFMA, which provides in DCM Core Principle 5 (section 5(d)(5) of the Act), that "[t]o reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate."

[31] The formulaic approach, initially developed by Blake Imel, former Acting Director of the Division of Economic Analysis (the Division has since been merged into the Division of Market Oversight), was premised on limiting the concentration of positions in the hands of one or a few traders by requiring a minimum number of distinct market participants.

[32] 64 FR 24038, at 24039 (May 5, 1999).

[33] 57 FR 12766, at 12771 (April 13, 1992).

[34] *Id.* at 12770.

[35] *Id.*

[36] 17 CFR part 38, Appendix B, Core Principle 5(d)(5).

[37] 66 FR 42256 (August 10, 2001).

[38] 70 FR 24705 (May 11, 2005).

in the energy markets. Specifically, the 2008 legislation amended CEA section 4a(e) to give the CFTC enforcement authority over position limits certified by the exchanges and adopted new section 2(h)(7) to apply a position limit and position accountability core principle to ECM–SPDCs.[39] Notably, the legislation also extended the Commission's authority to set Federal speculative position limits, under CEA section 4a(a), to ECM–SPDCs.

B. Statutory Basis and Need for Energy Speculative Position Limits

Energy futures and option contracts have never been subject to CFTC-set speculative position limits. These contracts began to attract significant trading volumes in the early 1980s beginning with NYMEX's New York Harbor No. 2 heating oil futures contract,[40] followed by NYMEX's gasoline futures contract in 1981 and crude oil futures contract in 1983. NYMEX did not initially adopt position limits for heating oil futures contracts. However, with the adoption of Commission regulation 1.61, effective November 16, 1981, each exchange was required to submit for Commission approval speculative position limits for each actively traded futures contract. Thereafter, newly designated contracts (*e.g.,* NYMEX's crude oil futures contract in 1983) were required to be accompanied by exchange speculative position limit rules as a condition of designation.

As noted above, in 1999 the Commission reorganized its speculative position limit regulations to codify its earlier administrative practice of allowing exchanges to adopt position accountability rules in lieu of numerical position limits for positions outside of the spot month. Currently, virtually all of NYMEX's energy futures and option contracts and ICE's single SPDC contract are subject to exchange-set position accountability rules during non-spot months and to hard speculative position limits during spot months.

From 2007 to mid 2008, commodity prices generally, and energy prices in particular, increased significantly and experienced unusual volatility. As a result of this, Commission-regulated energy markets, as well as the over-the-counter ("OTC") energy swap markets over which the Commission has no direct regulatory authority, were the subject of numerous Congressional hearings[41] and formal and informal studies, including a preliminary review by an Interagency Task Force chaired by CFTC staff.[42] In the summer of 2009, the Commission held three days of hearings "to discuss energy position limits and hedge exemptions" ("Energy Hearings").[43] The Commission heard from 26 witnesses, including members of the U.S. House and Senate, swap dealers, money managers, futures market participants (including commercial hedgers), trade associations, exchanges, and consumer advocates.[44] In addition, a total of 5,281 email comments were received (including some 1,200 identical emails from a single commenter).[45]

As with the Congressional hearings and market studies, there were mixed opinions among the Energy Hearing participants as to the causes of the price rises and market volatility. With respect to position limits for energy commodities, a number of witnesses expressed concern over the impact on energy prices of excessive speculation and supported position limits.[46] Others cautioned that such limits could be ineffective, hurt market liquidity or distort the price discovery process if not properly constructed.[47]

As discussed above, section 4a(a) represents an explicit Congressional finding that extreme or abrupt price fluctuations attributable to unchecked speculative positions are harmful to the futures markets and that position limits can be an effective prophylactic regulatory tool to diminish, eliminate or prevent such activity. Accordingly, Congress charged the Commission with responsibility for setting contract position limits in any commodity to prevent or minimize extreme or abrupt price movements resulting from large or concentrated positions. Under the authority granted to it, the Commission may impose speculative position limits without finding an extant undue burden on interstate commerce resulting from excessive speculation.[48] Section 8a(5) of the Act also provides that the Commission may make and promulgate such rules and regulations that in its judgment are reasonably necessary to accomplish any of the purposes of the Act.

Large concentrated positions in the energy futures and option markets can potentially facilitate abrupt price movements and price distortions. The prevention of unreasonable and abrupt price movements that are attributable to large or concentrated speculative positions is a congressionally endorsed regulatory objective. This objective is furthered by position limits, particularly given that the capacity of any reporting market to absorb the establishment and liquidation of large speculative

[39] *See* 7 U.S.C. 2(h)(7)(C)(IV).

[40] The contract was designated in October 1974, but significant volume first developed in 1980.

[41] At the hearings, numerous witnesses expressed concern regarding the impact on energy prices of speculation on commodity futures markets, including particularly the price impact of trading by swap dealers and index funds. Alternatively, many other witnesses expressed the view that fundamental market conditions were the primary driver of prices.

[42] The Task Force included staff representatives from the Departments of Agriculture, Energy and the Treasury, the Board of Governors of the Federal Reserve, the Federal Trade Commission, and the Securities and Exchange Commission. The Task Force looked at the crude oil market between January 2003 and June 2008. The staff members of the various agencies did not find direct causal evidence for the general increase in oil prices between January 2003 and June 2008. Interagency Task Force on Commodity Markets, Interim Report on Crude Oil (July 22, 2008).

[43] Commodity Futures Trading Commission, "CFTC to Hold Three Open Hearings to Discuss Energy Position Limits and Hedge Exemptions," CFTC Release 5681–09 (July 21, 2009).

[44] *See* the following Commission Releases for a listing of agendas and witnesses and related links:

5681–09 (July 21, 2009) *http://www.cftc.gov/newsroom/generalpressreleases/2009/pr5681-09.html;*

5682–09 (July 27, 2009) *http://www.cftc.gov/newsroom/generalpressreleases/2009/pr5682-09.html;*

and 5685–09 (July 31, 2009) *http://www.cftc.gov/newsroom/generalpressreleases/2009/pr5685-09.html.*

[45] Persons wishing to review these comments may contact the Commission's Secretariat at *secretary@cftc.gov.*

[46] "This increase in volatility has been associated with a massive increase in speculative investment in oil futures." Ben Hirst, Senior Vice President and General Counsel for Delta Airlines; "* * *[S]peculative trading strategies may not always have a benign effect on the markets." Laura Campbell, Assistant Manager of Energy Resources, Memphis Light, Gas & Water, on behalf of The American Public Gas Association; "That ability [to hedge heating fuel costs], however, is now being undermined by an erratic market, questionable investment tactics and purely speculative market forces." Sean Cota, President, Cota & Cota, Inc. Hearings on Energy Position Limits and Hedge Exemptions, July 28, July 29 and August 5, 2009, at the Commodity Futures Trading Commission.

[47] "If [limits] are set too tight, traders who possess important market information and provide crucial liquidity are kept away." Todd E. Petzel. Chief Investment Officer, Offit Capital Advisors; "Simply eliminating or limiting swap dealer hedge exemptions will impair liquidity, have other unintended consequences and would very likely not achieve the stated objective." Donald Casturo, Managing Director, Goldman Sachs & Co.; "Position limits no matter how well meaning create real market migration risk and pushing price discovery of agricultural, energy or metals markets to overseas or other trading venues would be contrary to the purposes of the Act." Mark D. Young, Kirkland & Ellis LLP. Hearings on Energy Position Limits and Hedge Exemptions, July 28, July 29 and August 5, 2009, at the Commodity Futures Trading Commission.

[48] Moreover, the exchanges' independent responsibility to monitor trading and implement position limits and position accountability rules does not detract from or otherwise impair the Commission's broad authority to impose speculative limits.

positions in an orderly manner is related to the relative size of such positions and is not unlimited. Specifically, when large speculative positions are amassed in a contract, or contract month, the potential exists for unreasonable and abrupt price movements should the positions be traded out of or liquidated in a disorderly manner. Concentration of large positions in one or a few traders' accounts can also create the unwarranted appearance of appreciable liquidity and market depth. Trading under such conditions can result in greater volatility than would otherwise prevail if traders' positions were more evenly distributed among market participants.

Furthermore, concurrent trading in economically similar and equivalent energy futures and option contracts on multiple exchanges effectively creates a single but fragmented market for such contracts. Because individual exchanges have knowledge of positions only on their own trading facilities, it is difficult for them to assess the full impact of a trader's positions on the greater market. As such, monitoring and limiting positions through exchange-specific position limits and through the enforcement of exchange position accountability rules, though necessary and beneficial, may not sufficiently guard against potential market disruptions.

For these reasons, the Commission is proposing to establish reporting market-specific Federal speculative position limits for futures and option contracts in certain energy commodities and aggregate position limits that would apply across economically similar contracts, regardless of whether such contracts are listed on a single or on multiple reporting markets, to curb the impact of disruptive excessive speculation.

IV. Exemptions and Account Aggregation

The Commission's current regulatory framework for Federal speculative position limits consists of three elements, (i) the levels of the Commission-set speculative position limits (discussed above), (ii) certain exemptions from the limits (*e.g.,* for hedging, spreading or arbitraged positions), and (iii) the policy on aggregating related accounts for purposes of applying the limits.

Commission regulation 150.3, headed "Exemptions," lists certain types of positions that may be exempted from (and thus may exceed) the Federal speculative position limits delineated in regulation 150.2. In particular, under regulation 150.3(a)(1), *bona fide* hedging transactions, as defined in Commission regulation 1.3(z), may exceed Commission-set position limits.[49] The first two parts of the *bona fide* hedging definition include a general definition of *bona fide* hedging (*see* paragraph (z)(1)) and a listing of certain enumerated hedging transactions in the agricultural commodities that are currently subject to Federal position limits (*see* paragraph (z)(2)). Paragraph (z)(3) of the definition provides flexibility to the Commission in granting exemptions by permitting additional transactions to be recognized as *bona fide* hedging upon a trader's request, made in accordance with the application provisions of Commission regulation 1.47. Regulation 1.47 requires a person seeking a *bona fide* hedge exemption under regulation 1.3(z)(3) to provide the Commission with various information that will, among other things, "demonstrate that the purchases and sales are economically appropriate to the reduction of risk exposure attendant to the conduct and management of a commercial enterprise."[50]

In addition to regulation 150.3(a)(1)'s *bona fide* hedging exemption, regulation 150.3(a) includes two other exemptions from the Federal speculative position limits. Regulation 150.3(a)(3) exempts "spread or arbitrage positions between single months of a futures contract * * * outside of the spot-month, in the same crop year * * *." Subject to various conditions, regulation 150.3(a)(4) exempts positions "[c]arried for an eligible entity as defined in regulation 150.1(d), in the separate account or accounts of an independent account controller, as defined in regulation 150.1(e) * * *." Eligible entities include mutual funds, commodity pool operators and commodity trading advisors. Entities claiming this exemption are required, upon call by the Commission, to provide information supporting their claim that the account controllers for

[49] Commission regulation 1.3(z) provides:

"*Bona fide hedging transactions and positions*—(1) *General definition. Bona fide* hedging transactions and positions shall mean transactions or positions in a contract for future delivery on any contract market, or in a commodity option, where such transactions or positions normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel, and where they are economically appropriate to the reduction of risks in the conduct and management of a commercial enterprise, and where they arise from:

(i) The potential change in the value of assets which a person owns, produces, manufactures, processes, or merchandises or anticipates owning, producing, manufacturing, processing, or merchandising,

(ii) The potential change in the value of liabilities which a person owns or anticipates incurring, or

(iii) The potential change in the value of services which a person provides, purchases, or anticipates providing or purchasing.

Notwithstanding the foregoing, no transactions or positions shall be classified as *bona fide* hedging unless their purpose is to offset price risks incidental to commercial cash or spot operations and such positions are established and liquidated in an orderly manner in accordance with sound commercial practices and, for transactions or positions on contract markets subject to trading and position limits in effect pursuant to section 4a of the Act, unless the provisions of paragraphs (z)(2) and (3) of this section and §§ 1.47 and 1.48 of the regulations have been satisfied.

(2) *Enumerated hedging transactions.* The definitions of *bona fide* hedging transactions and positions in paragraph (z)(1) of this section includes, but is not limited to, the following specific transactions and positions:

(i) *Sales* of any commodity for future delivery on a contract market which do not exceed in quantity:

(A) Ownership or fixed-price purchase of the same cash commodity by the same person; and

(B) Twelve months' unsold anticipated production of the same commodity by the same person provided that no such position is maintained in any future during the five last trading days of that future.

(ii) *Purchases* of any commodity for future delivery on a contract market which do not exceed in quantity:

(A) The fixed-price sale of the same cash commodity by the same person;

(B) The quantity equivalent of fixed-price sales of the cash products and by-products of such commodity by the same person; and

(C) Twelve months' unfilled anticipated requirements of the same cash commodity for processing, manufacturing, or feeding by the same person, provided that such transactions and positions in the five last trading days of any one future do not exceed the person's unfilled anticipated requirements of the same cash commodity for that month and for the next succeeding month.

(iii) Offsetting sales and purchases for future delivery on a contract market which do not exceed in quantity that amount of the same cash commodity which has been bought and sold by the same person at unfixed prices basis different delivery months of the contract market, provided that no such position is maintained in any future during the five last trading days of that future.

(iv) Sales and purchases for future delivery described in paragraphs (z)(2)(i), (ii), and (iii) of this section may also be offset other than by the same quantity of the same cash commodity, provided that the fluctuations in value of the position for future delivery are substantially related to the fluctuations in value of the actual or anticipated cash position, and provided that the positions in any one future shall not be maintained during the five last trading days of that future.

(3) *Non-enumerated cases.* Upon specific request made in accordance with § 1.47 of the regulations, the Commission may recognize transactions and positions other than those enumerated in paragraph (z)(2) of this section as *bona fide* hedging in such amount and under such terms and conditions as it may specify in accordance with the provisions of § 1.47. Such transactions and positions may include, but are not limited to, purchases or sales for future delivery on any contract market by an agent who does not own or who has not contracted to sell or purchase the offsetting cash commodity at a fixed price, *provided that* the person is responsible for the merchandising of the cash position which is being offset." 17 CFR 1.3(z).

[50] 17 CFR 1.47(b)(2).

these positions are acting independently.

Also, in order to achieve the intended effect of the Federal speculative position limits, Commission regulation 150.4, headed "Aggregation of positions," requires the Commission and the exchanges to treat multiple accounts subject to common ownership or control as if they are held by a single trader. Such accounts are typically considered to be under a common ownership if one or more traders have a 10% or greater financial interest in the accounts and do not otherwise qualify for an exemption from aggregation, such as the independent account controller exemption discussed above. The aggregation standards are applied in a manner calculated to aggregate related positions. For example, each participant with a 10% or greater financial interest in an account must aggregate the entire position of that account—not just the participant's fractional share—together with other positions that the participant may independently hold. Likewise, a commodity futures or option contract pool comprised of many traders is allowed only to hold positions as if it were a single trader. The Commission also treats positions that are not commonly owned, but are traded pursuant to an express or implied agreement, as a single aggregated position for purposes of applying the Federal speculative position limits. Exceptions to the aggregation standards exist for certain pool participants, such as limited partners and shareholders that cannot exercise control over the positions of the pool.

V. *Bona Fide* Hedge Exemptions

Prior to 1974, the CEA included a limited statutory hedging definition that applied only to agricultural commodities. When the Commission was created in 1974, the Act's definition of commodity was expanded. At that time, Congress was concerned that the limited hedging definition, even if applied to newly regulated commodity futures, would fail to accommodate the commercial risk management needs of market participants that could emerge over time. Accordingly, Congress, in section 404 of the Commodity Futures Trading Commission Act of 1974, repealed the statutory definition and gave the Commission the authority to define *bona fide* hedging.

The Commission exercised this authority in 1977 by adopting regulations 1.3(z) and 1.47.[51] Those regulations have remained unchanged since 1977. By the mid 1980s, new concerns had emerged. Under the Commission's definition, *bona fide* hedge transactions "normally represent a substitute for transactions to be made or positions to be taken at a later time in a physical marketing channel," and are "economically appropriate to the reduction of risks in the conduct of a commercial enterprise."[52] This aspect of the hedging definition proved to be ill fitted to the economic realities of financial futures. Portfolio managers utilize the financial futures markets to add incremental income to managed assets, to manage overall risk, or to rebalance a portfolio. Indeed, futures market positions are often acquired entirely as an alternative to cash market transactions (in view of the lower transaction costs, speed, and minimal price impact), rather than as a temporary substitute for positions that will later be taken in the underlying cash market.

In 1986, in response to concerns raised in testimony regarding the constraints on investment decisions imposed by position limits, the House Committee on Agriculture, in its report accompanying the Commission's 1986 reauthorization legislation, instructed the Commission to reexamine its approach to speculative position limits and its definition of hedging.[53] Specifically, the Committee Report "strongly urge[d] the Commission to undertake a review of its hedging definition * * * and to consider giving certain concepts, uses, and strategies 'non-speculative' treatment * * * whether under the hedging definition or, if appropriate, as a separate category similar to the treatment given certain spread, straddle or arbitrage positions * * *"[54] The Committee Report singled out four categories of trading and positions that the Commission should recognize as non-speculative: (i) "Risk management" trading by portfolio managers as an alternative to the concept of "risk reduction;" (ii) futures positions taken as alternatives to, rather than as temporary substitutes for, cash market positions; (iii) other positions acquired to implement strategies involving the use of financial futures including, but not limited to, asset allocation (altering portfolio exposure in certain areas such as equity and debt), portfolio immunization (curing mismatches between the duration and sensitivity assets and liabilities to ensure that portfolio assets will be sufficient to fund the payment of liabilities), and portfolio duration (altering the average maturity of a portfolio's assets); and (iv) certain options trading, in particular the writing of covered puts and calls.[55]

The Senate Committee on Agriculture, Nutrition and Forestry, in its report on the 1986 CFTC reauthorization legislation, also directed the Commission to reassess its interpretation of *bona fide* hedging.[56] The Commission heeded Congress's recommendation, and its staff issued interpretive statements directing that risk management exemptions be included as speculative position limit exemptions in addition to the existing exemptions for hedging, arbitrage and spreading.[57] The interpretive statements recognized new types of "risk reducing" and "risk shifting" strategies in financial futures (including "dynamic asset allocation strategies") as falling within the *bona fide* hedging category.

The next significant change in trading patterns and practices in derivatives markets involved an influx of new traders into the market seeking exposure to commodities as an asset class through passive, long-term investment in commodity indexes as a way of diversifying portfolios that might otherwise be limited to equities and debt instruments.[58] New market participants included commodity index traders (including pension and endowment funds, as well as individual investors participating in commodity index-based funds or trading programs) and swap dealers seeking to hedge price risk from OTC trading activity (frequently opposite those same commodity index traders).

The development of the OTC swaps industry, over which the Commission generally has no regulatory authority, is related to the exchange-traded futures and options industry in that a swap agreement[59] can either compete with or

[51] 42 FR 42748 (August 24, 1977).

[52] 17 CFR 1.3(z)(1).

[53] House Committee on Agriculture, Futures Trading Act of 1986, H.R. Rep. No. 624, 99th Cong., 2d Sess. 44–46 (1986).

[54] *Id.* at 46.

[55] *Id.*

[56] Senate Committee on Agriculture, Nutrition and Forestry, Futures Trading Act of 1986, S. Rep. No. 291, 99th Cong., 2d Sess. at 21–22 (1986). Specifically, the Senate Committee directed the Commission to consider "whether the concept of prudent risk management [should] be incorporated in the general definition of hedging as an alternative to this risk reduction standard." *Id.,* at 22.

[57] *See,* Clarification of Certain Aspect of the Hedging Definition, 52 FR 27195 (July 20, 1987); Risk Management Exemptions from Speculative Position Limits Approved under Commission Regulation 1.61, 52 FR 34633 (September 14, 1987).

[58] The argument has also been made that commodities act as a general hedge of liability obligations that are linked to inflation.

[59] A swap agreement is typically a privately negotiated exchange of one asset or cash flow for another asset or cash flow. In a commodity swap, at least one of the assets or cash flows is related to the price of one or more commodities.

complement regulated commodity futures and options trading.[60] Market participants often enter into OTC swap agreements because, unlike more standardized futures contracts, they can be customized to match particular hedging or price exposure needs. Swap dealers, often affiliated with a bank or other large financial institution, act as swap counterparties to both commercial firms seeking to hedge price risks and speculators seeking to gain price exposure. Swap dealers, in turn, utilize the more standardized futures markets to manage the residual risk of their swaps book.[61] In addition, some swap dealers also deal directly in the merchandising of physical commodities.

In accordance with the above-discussed Congressional recommendations, market developments, and the Commission's recognition of a risk management exemption for financial futures, beginning in 1991, the Commission staff extended the concept of risk management exemptions from speculative position limits by granting *bona fide* hedge exemptions, in various agricultural futures markets subject to Federal speculative position limits, to a number of swap dealers who were seeking to manage price risks on their books arising from swap dealing activities. The first such hedge exemption involved J. Aron, a large commodity merchandising firm that engaged in commodity related swaps as a part of a commercial line of business. The firm, through an affiliate, wished to enter into an OTC swap transaction with a qualified counterparty (a large pension fund) involving an index based on the returns afforded by investments in exchange-traded futures contracts on certain non-financial commodities meeting specified criteria.[62] The commodities making up the index included contracts in certain agricultural commodities subject to Federal speculative position limits. As a result of the swap, J. Aron would have, in effect, been going short the index. In order to protect itself against this risk, the firm planned to establish a portfolio of long futures positions in the commodities making up the index, in such amounts as would replicate its exposure under the swap transaction. By design, the index did not include contract months that had entered the delivery period and J. Aron, in replicating the index, stated that it would not maintain futures positions based on index-related swap activity into the spot month (when physical commodity markets are most vulnerable to manipulation and attendant price fluctuations). With this risk mitigation strategy, the firm's composite return on its futures portfolio would have offset the net payments that the dealer would have been required to make to the pension fund counterparty.

The futures positions J. Aron required to cover its exposure on the swap agreement's agricultural component would have been in excess of certain Federal speculative position limits. Accordingly, the firm requested, and the staff granted, a hedge exemption for those futures positions, that offset risks directly related to the OTC swap transaction.

Subsequently, the Commission staff granted a number of similar hedge exemptions, pursuant to delegated authority, in other cases where the futures positions clearly offset risks related to swap agreements or similar OTC positions involving both individual commodities and commodity indexes. These non-traditional "hedges" were all subject to specific limitations to protect the marketplace from potential ill effects. The limitations required: (i) The futures positions to offset specific price risk; (ii) the dollar value of the futures positions to be no greater than the dollar value of the underlying risk; and (iii) the futures positions to not be carried into the spot-month.[63]

In 2006, Commission staff issued two no-action letters involving another type of index-based trading.[64] Both cases involved trading that offered investors the opportunity to participate in a broadly-diversified commodity index-based fund or program ("index fund"). The futures positions of these index funds differed from the futures positions taken by the swap dealers who had earlier received exemptions. The swap dealer positions were taken to offset OTC swaps exposure that was directly linked to the price of an index. For that reason, Commission staff granted hedge exemptions to those swap dealer positions. On the other hand, in the index fund positions described in the no-action letters, the price exposure resulted from a promise or obligation to track an index, rather than from holding an OTC swap position whose value was directly linked to the price of an index. Commission staff believed that this difference was significant enough that the index fund positions would not qualify for a hedge exemption. Nevertheless, because the index fund positions represented a legitimate and potentially useful investment strategy, Commission staff granted the index funds no-action relief, subject to certain conditions intended to protect the futures markets from potential ill effects. These conditions required: (i) The positions to be passively managed; (ii) the positions to be unleveraged (so that financial conditions should not trigger rapid liquidations); and (iii) the positions to not be carried into the delivery month.

Prompted by concerns regarding the growing market presence of swap dealers and commodity index traders who use futures markets to manage risks related to OTC trading activity, in June and July of 2008, CFTC staff issued a special call for information from swap dealers and index traders. Based upon information collected from its special call, the Commission published on September 11, 2008, a "Staff Report on Commodity Swap Dealers and Index Traders with Commission Recommendations" (the "September 2008 Report"). Most relevant to the Commission's proposed rulemaking is the Report's recommendation that the Commission consider the elimination of *bona fide* hedge exemptions for swap dealers and the creation of a new, limited risk management exemption for the activities of swap dealers and commodity index traders.[65]

[60] The bilateral contracts that swap dealers create can vary widely, from terms tailored to meet the needs of a specific customer, to relatively standardized contracts.

[61] Because swap agreements can be highly customized, and the liquidity for a particular swap contract can be low, swap dealers may also use other swap agreements and physical market positions, in addition to futures, to offset the residual risks of their swap book.

[62] The commodities comprising such indexes may include the agricultural commodities subject to Federal speculative position limits, as well as energy commodities, metals and world agricultural commodities (*e.g.,* coffee, sugar, and cocoa).

[63] 72 FR 66097, at 66099 (November 27, 2007).

[64] CFTC Letter 06–09 (April 19, 2006); CFTC Letter 06–19 (September 6, 2006).

[65] The Report also made a number of other recommendations for Commission action, including: (1) Removing swap dealers from the commercial category in the Commitments of Traders Reports ("COT Reports") and creating a new swap dealer classification for reporting purposes; (2) Developing and publishing a new periodic supplemental report based on OTC swap dealer activity; (3) Creating a new CFTC Office of Data Collection dedicated to the collection and publication of COT Report data; (4) Establishing more detailed reporting standards for large traders; and (5) Conducting a review of swap dealers' futures trading activity to ensure that it is sufficiently independent of any affiliated commodity research. The Commission has largely addressed the Report's recommendations regarding COT Reports. The Commission has been publishing a new Disaggregated COT Report ("DCOT Report") for twenty-two different physical commodity markets since September 4, 2009 and expanded the DCOT Report to the remaining physical markets on December 4, 2009. The Commission also began publishing on September 4, 2009 a new quarterly report of Index Investment Data which shows for swap dealers and index funds their index

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In March of 2009, the Commission published a "Concept Release on Whether to Eliminate the *Bona Fide* Hedge Exemption for Certain Swap Dealers and Create a New Limited Risk Management Exemption from Speculative Position Limits."[66] The concept release reviewed the underlying statutory and regulatory background, as well as relevant regulatory history and marketplace developments, and posed a number of questions designed to help inform the Commission's decision as to: (i) Whether to proceed with the recommendation to eliminate the *bona fide* hedge exemption for swap dealers and replace it with a conditional limited risk management exemption; and (ii) if so, what form the new limited risk management exemptive regulations should take and how they might be implemented most effectively.

In response, the Commission received letters from 30 commenters, including futures exchanges, agricultural trade associations, financial industry trade associations, money management firms (including swap dealers), other market participants and various other interested parties. The comments were about equally divided between those who favored eliminating the *bona fide* hedge exemption for swap dealers (or restricting the exemption to positions offsetting swap dealers' exposure to traditional commercial market users) and those who favored retaining the swap dealer hedge exemption in its current form, or some variation thereof.[67] Similar views on hedge exemptions were also expressed at the Commission's Energy Hearings in July and August 2009.[68] As discussed below, the proposed regulations would not recognize futures and option transactions offsetting exposure acquired pursuant to swap dealing activity as *bona fide* hedges. Accordingly, swap dealers would not be allowed to seek *bona fide* hedge exemptions for such positions. Instead, however, upon compliance with several conditions including reporting and disclosure obligations, the proposed regulations would allow swap dealers to seek a limited exemption from the proposed speculative position limits for the major energy contracts.

VI. The Proposed Regulations

A. Overview

The proposed regulations seek to implement an integrated speculative position limit framework for exchange listed natural gas, crude oil, heating oil, and gasoline futures and option contracts. In addition to identifying the affected energy contracts with particularity, the proposed regulations would establish aggregate and exchange-specific speculative position limits, including provisions relating to exemptions from the proposed limits and related application and reporting requirements. The proposed regulations provide position limit exemptions for *bona fide* hedging transactions, certain swap dealer risk management transactions, and positions that remain, in their totality, in compliance with the applicable limits once option contracts that comprise a portion of a trader's overall position are delta-adjusted by a demonstrably appropriate risk factor. The proposed regulations key the setting of position limits to deliverable supplies and open interest. In addition, they seek to apply position limits to a set of readily identifiable contracts. By doing so, the proposed regulations intend to establish an objective and administerial process for fixing specific position limits and identifying the contracts to which they apply without relying on the Commission's exercise of discretion.

As discussed in detail below, the proposed spot-month limits generally are a function of the estimated deliverable supply for physically-settled contracts. The logic behind limiting positions based on deliverable supply is readily apparent since, for example, traders with sufficiently large positions can squeeze shorts and thereby distort the price of the deliverable commodity. In contrast, the proposed (non-spot) single-month and all-months-combined position limits would limit positions to a specific percentage of overall trading activity as represented by open interest. As such, the link between open interest and the proposed non-spot-month position limits may not be as readily apparent as the link between spot-month limits and estimated deliverable supply.

To illustrate how a formula based on open interest would restrict the ability of any single trader to disrupt market operations through the acquisition and liquidation of large speculative positions, it may be helpful to consider a framework in which there are no exemptions from position limits and there exists a single contract with an open interest level of 1,000 contracts. With these simplifications in place, a position limit that is set at 10% of open interest, given an assumed open interest level of 1,000 contracts, would be 100 contracts (*i.e.,* 10% of 1,000 contracts). Thus, the position limit, at the assumed open interest level of 1,000 contracts, would mean that there must, at a minimum, be 10 independent long and 10 independent short traders.[69] If there were 9 traders on either side of the market, then at least one trader would necessarily hold more than 100 contracts. That trader would hold such positions in violation of the contract's position limit.

Alternatively, if the position limit is set at a lower percentage of the contract's assumed open interest level of 1,000 contracts, then the minimum number of independent traders needed as market participants would be higher. For example, a position limit that is set at 2.5% of the assumed open interest level of 1,000 contracts would be 25 contracts (*i.e.,* 2.5% of 1,000 contracts). Accordingly, the minimum "size of the trading crowd" under this scenario would be 40 long and 40 short traders (40 traders each with 25 contract positions would equal the given open interest level of 1,000 contracts). Therefore, position limits that are formulaically set as a percentage of open interest can prevent any single trader from acquiring excessive market power if structured properly as one part of a comprehensive speculative position limit framework.

B. Identifying Referenced Energy Contracts

As proposed, the speculative position limits would apply only to referenced energy contracts. Proposed regulation 151.1 defines referenced energy contracts to mean one of four enumerated contracts—the NYMEX Henry Hub natural gas contract, the NYMEX Light Sweet crude oil contract, the NYMEX New York Harbor No. 2 heating oil contract, and the NYMEX New York Harbor gasoline blendstock (RBOB) contract—and in addition, any other contract that is exclusively or partially based on the referenced

investments in commodity markets in terms of notional values and equivalent futures positions. The Commission continues to study the viability of the September 2008 Report's other recommendations regarding the creation of an Office of Data Collection, the establishment of more detailed reporting standards for large traders and a review of the relation of swap dealers' futures trading and commodity research activities. September 2008 Report, at 6.

[66] 74 FR 12282 (March 24, 2009).

[67] The comments are available for review on the Commission's Web site at *http://www.cftc.gov/lawandregulation/federalregister/federalregistercomments/2009/09–004.html.*

[68] Also in August 2009, Commission staff withdrew CFTC Letters 06–09 and 06–19, which had granted staff no-action relief to two index funds (with passively managed positions) from complying with the Federal speculative position limits otherwise applicable to futures and option contracts in wheat, corn and soybeans.

[69] The concept of independence is important because the positions of a group of traders acting pursuant to a common plan would be aggregated as if the positions were traded by a single person.

contracts' commodities and deliverable at locations specified in the proposed regulations. Basis contracts and diversified commodity index futures that are based on such contracts' commodities, however, would not be considered to be referenced energy contracts and, therefore, would not be subject to the proposed speculative position limits.

Basis contracts, as defined in proposed regulation 151.1, are futures or option contracts that are cash settled based on the difference in price of the same commodity (or substantially the same commodity)[70] at different delivery points. These basis contracts have been excluded by the Commission from the speculative position limits because they price the difference between the same commodity in two different locations and not the underlying commodity itself.[71] Similarly, contracts based on diversified commodity indexes, defined in proposed regulation 151.1 as commodity indexes that are comprised of contracts in energy as well as non-energy commodities, are excluded because they may not involve a separate and distinct exposure to the price of a referenced energy contract's commodity.[72]

C. Determining Aggregate All-Months-Combined and Single-Month Position Limits

The current Federal speculative position limits of regulation 150.2 apply only to specific futures contracts (and on a futures-equivalent basis) specific option contracts. Historically, all trading volume in a specific contract tended to migrate to a single contract on a single exchange. Consequently, speculative position limits that applied to a single contract and options thereon effectively applied to a single market. The current speculative position limits of regulation 150.2 for certain agricultural contracts follow this approach.

In 2005, when the Commission last amended the agricultural speculative position limits of regulation 150.2, it codified the Commission's practice of grouping positions in a limited set of contracts on the same exchange with substantially identical terms for the purpose of applying the Federal agricultural speculative position limits.[73] This limited grouping of positions extended only to regular and mini-sized contracts on the same exchange, such as the CBOT Corn and Mini-Corn futures contracts, and did not extend to contracts that were cash settled to physically delivered contracts. At that time and subsequently in 2007 (in a notice of proposed rulemaking that was subsequently withdrawn), the Commission considered but refrained from adopting additional position grouping requirements for the agricultural contracts enumerated in regulation 150.2.[74]

With the advent of look-alike energy contracts that are listed on different registered entities and contracts that are based on other contracts in an attempt to isolate different energy price risks, most prominently contracts traded at NYMEX and ICE, applying a speculative position to a specific energy contract, and its smaller sized counterpart, if any, without consideration of other directly or highly related contracts could result in applying a position limit only to a very limited segment of a broader regulated market. Accordingly, the proposed regulations would, for positions outside the spot month, apply the proposed Federal speculative position limits aggregately on and across reporting markets to capture a broader segment of the open interest that comprises the market for the referenced energy contracts.

Proposed regulation 151.2(b)(1) would establish aggregate all-months-combined and single-month speculative limits for positions held outside the spot month. The proposed framework premises its limits on open interest levels, and would establish speculative position limits aggregately, that is, across contracts of different classes on a single exchange and across all reporting markets listing the same referenced energy contracts. As defined in proposed regulation 151.1, contracts of the same class outside of the spot month include all referenced energy contracts (including option contracts on a futures-equivalent basis) on a single reporting market that are based on the same commodity and settled in the same manner. As proposed, NYMEX's crude oil financial calendar spread option, last day financial futures and options thereon, and light sweet crude oil e-mini contracts, as cash-settled NYMEX contracts, would all be grouped together as contracts of the same class. NYMEX's physically-settled light sweet crude oil contract, however, would be in a different class because the contract is physically-settled as opposed to being a financial futures contract like the contracts listed above. Similarly, ICE's natural gas SPDC, although financially-settled and related to NYMEX's natural gas contracts, would be in a different class because it is on a different exchange. As discussed more fully below, categorizing the referenced energy contracts in this manner allows for the application of aggregate and class-specific speculative position limits and permits for the netting of positions as appropriate.

In fixing aggregate all-months-combined and single-month position limits across contract classes, that is, for related contracts of different classes on and across the exchanges, the Commission would initially identify the referenced energy contracts that are based on the same commodity but that constitute a distinct class of contracts because, for example, they are cash-settled as opposed to physically-settled, or because they are listed on different reporting markets. The Commission next would calculate each class's average combined futures and delta-adjusted option month-end open interest for all months listed on a reporting market during the most recent calendar year as the first reference point ("class single-exchange gross open interest value").

The proposed regulations would subtract the open interest generated from spread contracts, as defined in regulation 151.1, from the class single-exchange gross open interest value to arrive at a "class single-exchange final open interest value." Proposed regulation 151.1 would define spread contracts as either a calendar spread contract or an inter-commodity spread contract.[75] Open interest generated from

[70] A commodity may be considered "substantially the same," for instance, if it is of the same grade and quality. If a commodity meets an underlying referenced energy contract's deliverable grade and quality specifications, then such commodity presumptively is substantially similar.

[71] It should also be noted that, although a grade may be substantially similar to a referenced energy contract's commodity, this is not sufficient to render a futures or option contract a referenced energy contract. In order to be included as a referenced energy contract, a substantially similar commodity must also be deliverable at a referenced energy contract's delivery point(s).

[72] Examples of diversified commodity indexes include the S&P/Goldman Sachs Commodity Index, the Thomson Reuters/Jefferies CRB Index and the Dow Jones-UBS Commodity Index.

[73] 70 FR 24705 (May 11, 2005).

[74] *See,* 70 FR 12621 (March 15, 2005); 72 FR 65483 (November 21, 2007).

[75] More specifically, proposed regulation 151.1 defines "calendar spread contracts" as contracts that are settled based on the difference between the settlement prices in one expiring month of a referenced energy contract and another month's settlement price for the same referenced energy contract. The proposed regulations would define "inter-commodity spread" contracts as contracts that are based on the price difference between the settlement price of a referenced energy contract and another commodity contract. An example of a calendar spread contract is the NYMEX Crude Oil Calendar Spread Financially Settled Option Contract (WA). This contract represents an option to assume positions in two different NYMEX Light Sweet crude oil futures contracts distinguished by opposite positions in different delivery months. An

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spread contracts, as defined in proposed regulation 151.1, is not included in the class single-exchange final open interest value because spread contracts may be indicative of nominal commodity price exposures. Traders on both sides of spread contracts, as defined by the proposed regulations, hold a single position composed of two highly correlated legs. Therefore, open interest from such contracts may be excluded from the base open interest value that is used to calculate speculative position limits. Although excluded from the class single-exchange final open interest value that, as discussed below, is used to set the aggregate all-months-combined and single-month position limits, such contracts, unlike basis contracts and contracts based on diversified commodity indexes, are nonetheless referenced energy contracts and therefore are attributable to traders for the purposes of determining a trader's compliance with, for example, the proposed single-month speculative position limits.

The following table lists the contracts, grouped by class, which would be used to determine a class's single-exchange final open interest value as described above:

CONTRACT LIST WITHOUT SPREAD CONTRACTS

Class of contract	Contract name	Contract code	Spot-month conversion factor relative to referenced energy contract	Individual month conversion factor relative to referenced energy contract	All months combined conversion factor relative to referenced energy contract
Crude Oil/Physical Delivery/NYMEX	*Light Sweet Crude Oil Futures*	CL	1	1	1
	Light Sweet Crude Oil Option	LO	0	1	1
Crude Oil/Cash-Settled/NYMEX	*Crude Oil Financial Futures*	WS	1	1	1
	Crude Oil Last Day Financial Futures ..	26	1	1	1
	Crude Oil Option on Calendar Strip	6F	0	1	12
	Crude Oil Option on Quarterly Futures Strip.	6E	0	1	3
	Daily Crude Oil Option	CD	0	1	1
	E-mini Crude Oil Futures	QM	½	½	½
	NYMEX Crude Oil Backwardation/ Contango (B/C) Index.	XK	0	⅕	⅕
	NYMEX Crude Oil MACI Index	XC	0	⅕	⅕
	NYMEX Crude Oil Minute-Marker Calendar Month Swap Futures.	4T	1	1	1
	NYMEX Crude Oil Minute-Marker Futures.	6C	1	1	1
	WTI Average Price Option	AO	0	1	1
	WTI Calendar Swap Futures	CS	1	1	1
	WTI Look-Alike Option	LC	0	1	1
Gasoline/Physical Delivery/NYMEX	*RBOB Gasoline Futures*	RB	1	1	1
	RBOB Gasoline Option	OB	0	1	1
Gasoline/Cash-Settled/NYMEX	*E-mini RBOB Gasoline Futures*	QU	½	½	½
	NYMEX RBOB Gasoline Minute-Marker Calendar Month Swap Futures.	5T	1	1	1
	NYMEX RBOB Gasoline Minute-Marker Futures.	6R	1	1	1
	RBOB Gasoline Average Price Option	RA	1	1	1
	RBOB Gasoline BALMO Swap Futures	1D	1	1	1
	RBOB Gasoline Calendar Swap Futures.	RL	1	1	1
	RBOB Gasoline Financial Futures	RT	1	1	1
	RBOB Gasoline Last Day Financial Futures.	27	1	1	1
	RBOB Gasoline Look-Alike European Option.	RF	0	1	1
Heating Oil/Physical Delivery/NYMEX ..	*Heating Oil Option*	OH	0	1	1
	New York Harbor No. 2 Heating Oil Futures.	HO	1	1	1
Heating Oil/Cash-Settled/NYMEX	*E-mini Heating Oil Futures*	QH	½	½	½
	Heating Oil Average Price Option	AT	1	1	1
	Heating Oil BALMO Swap Futures	1G	1	1	1
	Heating Oil Calendar Swap Futures	MP	1	1	1
	Heating Oil Financial Futures	BH	1	1	1
	Heating Oil Last Day Financial Futures	23	1	1	1
	Heating Oil Look-Alike Option	LB	0	1	1
	NYMEX Heating Oil Minute-Marker Calendar Month Swap Futures.	7T	1	1	1

example of an inter-commodity spread representing the price difference between two referenced commodities would be the NYMEX heating oil crack spread swap futures (HK) contract, which represents the price difference between two referenced energy contracts, the NYMEX New York Harbor No. 2 heating oil futures settlement price minus the NYMEX Light Sweet crude oil futures settlement price. A different example of an inter-commodity spread would be the NYMEX Mars (Argus) vs. WTI spread calendar swap (YX) which represents the Mars midpoint price from Argus Media minus the NYMEX Light Sweet crude oil futures first nearby contract month settlement price.

CONTRACT LIST WITHOUT SPREAD CONTRACTS—Continued

Class of contract	Contract name	Contract code	Spot-month conversion factor relative to referenced energy contract	Individual month conversion factor relative to referenced energy contract	All months combined conversion factor relative to referenced energy contract
	NYMEX Heating Oil Minute-Marker Futures.	6H	1	1	1
Natural Gas/Physical Delivery/NYMEX	*Henry Hub Natural Gas Futures*	NG	1	1	1
	Henry Hub Natural Gas Option	ON	1	1	1
Natural Gas/Cash-Settled/NYMEX	*Daily Natural Gas Option*	KD	0	1	1
	E-mini Henry Hub Natural Gas Penultimate Financial Futures.	NP	1/4	1/4	1/4
	E-mini Natural Gas Futures	QG	1/4	1/4	1/4
	Henry Hub Natural Gas Last Day Financial Futures.	HH	1	1	1
	Henry Hub Natural Gas Last Day Financial Option.	E7	1	1	1
	Henry Hub Natural Gas Look-Alike Option.	LN	1	1	1
	Henry Hub Natural Gas Penultimate Financial Futures.	HP	1	1	1
	Henry Hub Natural Gas Swap Futures	NN	1/4	1/4	1/4
	Natural Gas Option on Calendar Futures Strip.	6J	0	1/4	3
	Natural Gas Option on Summer Futures Strip.	4D	0	1/4	1 3/4
	Natural Gas Option on Winter Futures Strip.	6I	0	1/4	1 1/4
Natural Gas/Cash-Settled/ICE	*Henry Hub Natural Gas Swap*	H	1/4	1/4	1/4

Once a class single-exchange final open interest value is determined, under the proposed regulations, the Commission would sum this value for all related classes on and across all reporting markets to arrive at an "aggregated market open interest value" as a third reference point for each of the four referenced energy contracts. The proposed regulations would establish an all-months-combined aggregate position limit that is fixed by the Commission at 10% of the aggregated open interest value discussed above, up to 25,000 contracts, with a marginal increase of 2.5% thereafter.[76] This proposed formula is similar to the formula provided in current regulation 150.5(c).

The proposed regulations would set the single-month aggregate position limit at two-thirds of the position limit fixed for the all-months-combined aggregate position limit. This means that the aggregate all-months-combined position limit level would be 150% of the aggregate single-month position limit level. As previously discussed, in 2005 the Commission increased the all-months-combined Federal speculative position limits and reset the single-month levels to approximate the then existing ratio between all-months-combined and single-month levels (*i.e.,* arriving at the single-month limits by setting them at about two-thirds of the relevant all-months-combined limits). The proposed regulation's reliance on this approach for determining single non-spot-month limits is therefore consistent with prior Commission determinations.

As proposed, the intent of the aggregate position limits is to permit for the netting of positions in a referenced energy contract's different classes on a single exchange and across the exchanges for the purpose of determining compliance with the aggregate all-months-combined and aggregate single-month speculative position limits. Accordingly, no trader would be permitted to hold net long or net short referenced energy contract positions that, when combined with net long or net short positions in the same referenced energy contract on another exchange, would exceed the aggregate all-months-combined and aggregate single-month speculative position limits.

D. Single-Exchange Limits

In order to prevent the excessive concentration of positions in a particular class of contracts, for each reporting market separately, the proposed regulations would also establish an all-months-combined position limit that would apply specifically to contracts of the same class at the lower of the aggregate position limit for a referenced energy contract or 30% of a class's single exchange final open interest value. Accordingly, for the purpose of applying these exchange and class-specific speculative position limits, netting would only be permitted between contracts of the same class.

For each reporting market separately, the proposed regulations also would establish a single-month position limit for contracts of the same class that would be two-thirds of the all-months-combined position limit fixed for that class of contracts. Thus, the single-month limit on each reporting market for a class of contracts would be no greater than 20% of a class's single exchange final open interest value (*i.e.,* two-thirds of 30% of a class's single exchange final open interest value).

Proposed regulation 151.2 also establishes a minimum position limit for a reporting market of 5,000 contracts or 1% of the aggregated open interest value, whichever is greater. The Commission notes that the 5,000 contract level is consistent with its guidance on acceptable practices for exchanges setting all-months-combined position limits for newly listed energy contracts in current regulation

[76] Proposed regulation 151.2(e)(3) provides that the result of the formula is rounded up to the nearest one hundred to calculate the level of the limit.

150.5(b)(3). Levels set by reference to the 1% of aggregated open interest value and the 5,000 contract limit are intended to give newly listed contracts or contracts with low open interest the opportunity to attract liquidity. The concentration of positions held by a single trader on a particular reporting market, such as a market marker,[77] given the minimal impact that such trading may have on commodity prices, is acceptable because such levels promote innovation and competition.

In addition to the above mentioned position limits, as proposed, a trader's positions in contracts of the same class in a single month on a reporting market, measured on a gross basis, would be limited to no greater than two times the all-months-combined class position limit fixed for that reporting market. A limit on a trader's gross positions in a single month would serve to prevent sudden or unreasonable fluctuations or unwarranted changes in commodity prices that could arise from traders holding large positions that would otherwise net out (*e.g.,* offsetting positions in last trading day and penultimate contracts of the same class for the same month) for the purpose of applying the class single-month position limits.

The following table groups contracts by the classes in which they would be included under the proposed regulations:

CONTRACT LIST WITH SPREAD CONTRACTS

Class of contract	Contract name	Contract code	Spot-month conversion factor relative to referenced energy contract	Individual month conversion factor relative to referenced energy contract	All months combined conversion factor relative to referenced energy contract
Crude Oil/Physical Delivery/NYMEX.	*Light Sweet Crude Oil Futures*	CL	1	1	1
	Light Sweet Crude Oil Option	LO	0	1	1
	Heating Oil Crack Spread Option	HC	−1	−1	−1
	RBOB Gasoline Crack Spread Option	RX	−1	−1	−1
	WTI Calendar Spread Option	WA	1	1	0
Crude Oil/Cash-Settled/NYMEX.	*Crude Oil Financial Calendar Spread Option*	7A	1	1	1
	Crude Oil Financial Futures	WS	1	1	1
	Crude Oil Last Day Financial Futures	26	1	1	1
	Crude Oil Option on Calendar Strip	6F	0	1	12
	Crude Oil Option on Quarterly Futures Strip	6E	0	1	3
	Daily Crude Oil Option	CD	0	1	1
	E-mini Crude Oil Futures	QM	½	½	½
	Gulf Coast No. 2 (Platts) Crack Spread Swap Futures.	RD	−1	−1	−1
	Gulf Coast No. 6 Fuel Oil (Platts) Crack Spread Swap Futures.	MG	−1	−1	−1
	Gulf Coast ULSD (Argus) Crack Spread Swap Futures.	CF	−1	−1	−1
	Gulf Coast ULSD (Platts) Crack Spread Swap Futures.	GY	−1	−1	−1
	Gulf Coast Unl 87 (Argus) Crack Spread Swap Futures.	CK	−1	−1	−1
	Gulf Coast Unl 87 (Platts) Crack Spread BALMO Swap Futures.	1J	−1	−1	−1
	Gulf Coast Unl 87 (Platts) Crack Spread Swap Futures.	RU	−1	−1	−1
	Heating Oil Crack Spread Average Price Option	3W	−1	−1	−1
	Heating Oil Crack Spread BALMO Swap Futures	1H	−1	−1	−1
	Heating Oil Crack Spread Swap Futures	HK	−1	−1	−1
	Mars (Argus) vs. WTI Spread Calendar Swap Futures.	YX	−1	−1	−1
	Mars (Argus) vs. WTI Spread Trade Month Swap Futures.	YV	−1	−1	−1
	New York Harbor Residual Fuel (Platts) Crack Spread Swap Futures.	ML	−1	−1	−1
	New York Ultra Low Sulfur Diesel (ULSD) Crack Spread Swap.	YU	−1	−1	−1
	NYMEX Crude Oil Backwardation/Contango (B/C) Index.	XK	0	⅕	⅕
	NYMEX Crude Oil MACI Index	XC	0	⅕	⅕
	NYMEX Crude Oil Minute-Marker Calendar Month Swap Futures.	4T	1	1	1
	NYMEX Crude Oil Minute-Marker Futures	6C	1	1	1
	RBOB Gasoline Crack Spread Average Price Option.	3Y	−1	−1	−1

[77] A market maker is a trader that quotes both a buy and a sell price in an attempt to profit from the spread.

CONTRACT LIST WITH SPREAD CONTRACTS—Continued

Class of contract	Contract name	Contract code	Spot-month conversion factor relative to referenced energy contract	Individual month conversion factor relative to referenced energy contract	All months combined conversion factor relative to referenced energy contract
	RBOB Gasoline Crack Spread BALMO Swap Futures.	1E	−1	−1	−1
	RBOB Gasoline Crack Spread Swap Futures	RM	−1	−1	−1
	WTI Average Price Option	AO	0	1	1
	WTI Calendar Swap Futures	CS	1	1	1
	WTI Look-Alike Option	LC	0	1	1
	WTS (Argus) vs. WTI Spread Calendar Swap Futures.	FF	−1	−1	−1
	WTS (Argus) vs. WTI Spread Trade Month Swap Futures.	FH	−1	−1	−1
Gasoline/Physical Delivery/NYMEX.	*RBOB Gasoline Futures*	RB	1	1	1
	RBOB Gasoline Option	OB	0	1	1
	RBOB Gasoline Calendar Spread Option	ZA	1	1	0
	RBOB Gasoline Crack Spread Option	RX	0	1	1
Gasoline/Cash-Settled/NYMEX.	*Chicago Unleaded Gasoline (Platts) vs. RBOB Gasoline Spread Swap Futures.*	3C	−1	−1	−1
	E-mini RBOB Gasoline Futures	QU	½	½	½
	Group Three Unleaded Gasoline (Platts) vs. RBOB Spread Swap.	A8	−1	−1	−1
	Gulf Coast Gasoline (OPIS) vs. RBOB Gasoline Spread Swap Futures.	4F	−1	−1	−1
	Gulf Coast Unl 87 (Argus) Up-Down Swap Futures.	UZ	−1	−1	−1
	Gulf Coast Unl 87 (Platts) Up-Down BALMO Swap Futures.	1K	−1	−1	−1
	Gulf Coast Unl 87 (Platts) vs. RBOB Gasoline Spread Swap Futures.	RV	−1	−1	−1
	Los Angeles CARBOB Gasoline (OPIS) Spread Swap Futures.	JL	−1	−1	−1
	New York Harbor Conv. Gasoline (Platts) vs. RBOB Gasoline Swap Futures.	RZ	−1	−1	−1
	NY RBOB (Platts) vs. NYMEX RBOB Gasoline Spread Swap Futures.	RI	−1	−1	−1
	NYMEX RBOB Gasoline Minute-Marker Calendar Month Swap Futures.	5T	1	1	1
	NYMEX RBOB Gasoline Minute-Marker Futures	6R	1	1	1
	RBOB Gasoline Average Price Option	RA	1	1	1
	RBOB Gasoline BALMO Swap Futures	1D	1	1	1
	RBOB Gasoline Calendar Swap Futures	RL	1	1	1
	RBOB Gasoline Crack Spread Average Price Option.	3Y	1	1	1
	RBOB Gasoline Crack Spread BALMO Swap	1E	1	1	1
	RBOB Gasoline Crack Spread Swap Futures	RM	1	1	1
	RBOB Gasoline Financial Futures	RT	1	1	1
	RBOB Gasoline Last Day Financial Futures	27	1	1	1
	RBOB Gasoline Look-Alike European Option	RF	0	1	1
	RBOB Gasoline vs. Heating Oil Swap Futures	RH	1	1	1
Heating Oil/Physical Delivery/NYMEX.	*New York Harbor No. 2 Heating Oil Futures*	HO	1	1	1
	Heating Oil Option	OH	0	1	1
	Heating Oil Calendar Spread Options	FA	1	1	0
	Heating Oil Crack Spread Option	HC	0	1	1
Heating Oil/Cash-Settled/NYMEX.	*Chicago ULSD (Platts) vs. Heating Oil Spread Swap.*	5C	−1	−1	−1
	E-mini Heating Oil Futures	QH	½	½	½
	Group Three ULSD (Platts) vs. Heating Oil Spread Swap Futures.	A6	−1	−1	−1
	Gulf Coast Jet (Argus) Up-Down Swap Futures	JU	−1	−1	−1
	Gulf Coast Jet (OPIS) vs. Heating Oil Spread Swap Futures.	W7	−1	−1	−1
	Gulf Coast Jet (Platts) Up-Down BALMO Swap Futures.	1M	−1	−1	−1
	Gulf Coast Jet (Platts) vs. Heating Oil Spread Swap Futures.	ME	−1	−1	−1
	Gulf Coast Low Sulfur Diesel (LSD) (Platts) Up-Down Spread Swap Futures.	YL	−1	−1	−1
	Gulf Coast ULSD (Argus) Up-Down Swap Futures	US	−1	−1	−1

CONTRACT LIST WITH SPREAD CONTRACTS—Continued

Class of contract	Contract name	Contract code	Spot-month conversion factor relative to referenced energy contract	Individual month conversion factor relative to referenced energy contract	All months combined conversion factor relative to referenced energy contract
	Gulf Coast ULSD (OPIS) vs. Heating Oil Spread Swap Futures.	5Q	−1	−1	−1
	Gulf Coast ULSD (Platts) Up-Down Spread Swap Futures.	LT	−1	−1	−1
	Gulf Coast ULSD (Platts) Up-Down Swap Futures	1L	−1	−1	−1
	Heating Oil Arb : NYMEX Heating Oil vs. ICE Gasoil.	HA	1	1	1
	Heating Oil Average Price Option	AT	1	1	1
	Heating Oil BALMO Swap Futures	1G	1	1	1
	Heating Oil Calendar Swap Futures	MP	1	1	1
	Heating Oil Crack Spread Average Price Option	3W	1	1	1
	Heating Oil Crack Spread BALMO Swap Futures	1H	1	1	1
	Heating Oil Crack Spread Swap Futures	HK	1	1	1
	Heating Oil Financial Futures	BH	1	1	1
	Heating Oil Last Day Financial Futures	23	1	1	1
	Heating Oil Look-Alike Option	LB	0	1	1
	Los Angeles CARB Diesel (OPIS) Spread Swap Futures.	KL	−1	−1	−1
	Los Angeles Jet (OPIS) Spread Swap Futures	JS	−1	−1	−1
	Los Angeles Jet Fuel (Platts) vs. Heating Oil Spread Swap Futures.	MQ	−1	−1	−1
	NY Jet Fuel (Argus) vs. Heating Oil Spread Swap Futures.	5U	−1	−1	−1
	NY Jet Fuel (Platts) vs. Heating Oil Swap Futures	1U	−1	−1	−1
	NY ULSD (Platts) vs. NYMEX Heating Oil Spread Swap Futures.	UY	−1	−1	−1
	NYMEX Heating Oil Minute-Marker Calendar Month Swap Futures.	7T	1	1	1
	NYMEX Heating Oil Minute-Marker Futures	6H	1	1	1
	RBOB Gasoline vs. Heating Oil Swap Futures	RH	−1	−1	−1
	ULSD (Argus) vs. Heating Oil Spread Swap Futures.	7Y	−1	−1	−1
Natural Gas/Physical Delivery/NYMEX.	*Henry Hub Natural Gas Futures*	NG	1	1	1
	Henry Hub Natural Gas Option	ON	1	1	1
	Henry Hub Natural Gas Calendar Spread Options	IA	1	1	0
Natural Gas/Cash-Settled/NYMEX.	*Daily Natural Gas Option*	KD	0	1	1
	E-mini Henry Hub Natural Gas Penultimate Financial Futures.	NP	1/4	1/4	1/4
	E-mini Natural Gas Futures	QG	1/4	1/4	1/4
	Henry Hub Natural Gas Last Day Financial Futures.	HH	1	1	1
	Henry Hub Natural Gas Last Day Financial Option	E7	1	1	1
	Henry Hub Natural Gas Look-Alike Option	LN	1	1	1
	Henry Hub Natural Gas Penultimate Financial Futures.	HP	1	1	1
	Henry Hub Natural Gas Swap Futures	NN	1/4	1/4	1/4
	Henry Natural Gas Financial Calendar Spread Option.	G4	1	1	0
	Natural Gas Option on Calendar Futures Strip	6J	0	1/4	3
	Natural Gas Option on Summer Futures Strip	4D	0	1/4	1 3/4
	Natural Gas Option on Winter Futures Strip	6I	0	1/4	1 1/4
Natural Gas/Cash-Settled/ICE.	*Henry Hub Natural Gas Swap*	H	1/4	1/4	1/4

E. Spot-Month Classes of Contracts

An energy contract that is in its spot month, pursuant to industry practice and as defined in proposed regulation 151.1, is a futures contract that is "next to expire during that period of time beginning at the close of trading on the trading day preceding the first day on which delivery notices can be issued to the clearing organization of a registered entity." [78] In practice, the spot-month for the major energy contracts generally is

[78] For a contract that does not allow trading concurrently with the issuance of delivery notices, spot-month means "the futures contract next to expire during that period of time beginning at the close of trading on the third trading day preceding the last trading day." For a contract that cash-settles based on the price of one or more physically-delivered contracts, spot-month means "the period of time that is the spot-month for such physically-delivered contracts." The Commission intends the spot-month for options on futures contracts to be the same period of time as for the underlying futures contract.

three days in duration. In view of the heightened potential for manipulation, corners, squeezes as well as excessive speculation during this concentrated period of time, only those contracts that expire on the same day would be deemed to be contracts of the same class under the proposed regulations. This would mean that, for example, during the spot month, a cash-settled last trading day contract would not be in the same class as a cash-settled penultimate contract. The most significant impact of defining a class of contracts in a narrower manner during the spot-month is to prohibit the netting of spot-month contracts that expire on different days for the purpose of applying the proposed speculative position limits. By way of example, a trader that is 4,000 contracts long in a cash-settled last trading day contract, and 4,000 contracts short in a cash-settled penultimate contract on the same exchange in a referenced energy contract, would be subject to spot-month position limits for each contract and would not be deemed to be holding a flat position. In contrast, outside the spot month, each leg of this spread would be considered to be in the same class and therefore subject to netting for the purpose of applying the proposed class all-months-combined and single-month position limits.

F. Determining and Complying With the Proposed Spot-Month Limits

For physically-delivered contracts, a spot-month position limit would be fixed by the Commission at one-quarter of the estimated deliverable supply for a spot-month class of contracts. This proposed formula is consistent with current regulation 150.5(b) and the Acceptable Practices for Core Principle 5, in Appendix B to part 38, and the Commission's Guideline No. 1, in Appendix A to part 40. Proposed regulation 151.2(d) would require a reporting market listing physically-delivered contracts to submit to the Commission an estimate of deliverable supply for its contracts by December 31st of each calendar year. The Commission, in setting the spot-month limits, would take into consideration the estimates of deliverable supply provided by the reporting markets and would base its own determination of deliverable supply on data submitted by the reporting markets unless the Commission has a basis for questioning the accuracy of the submitted data, in which case the Commission would derive its own estimates of deliverable supply.

For cash-settled contracts based on the prices of physically-delivered futures contracts, the proposed regulations would establish a default spot-month position limit equal to that of the cash-settled contract's physically-delivered counterpart. The proposed regulations would allow a trader to acquire or hold positions in a spot-month class of contracts, pursuant to reporting market rules specifically implemented to address such positions, that is five times greater than the default spot-month limit upon satisfying certain conditions. A trader would be permitted to hold positions under this conditional-spot-month limit only if that trader does not hold a position in any physically-delivered referenced energy contract to which its cash-settled positions are linked in the spot month and satisfies the reporting requirements of proposed regulation 20.00.

Proposed regulation 20.00 sets forth reporting requirements for persons that would acquire positions in a referenced energy contract pursuant to the conditional-spot-month position limit of proposed regulation 151.2(a)(2). Specifically, this regulation would require such persons to file a completed CFTC Form 40 and Part A of new CFTC Form 404. CFTC Form 40, among other things, facilitates the Commission's identification of the persons controlling the trading of an account. Part A of new CFTC Form 404 would collect information on: A trader's spot and forward positions priced in relation to the relevant referenced energy contract or the contract's underlying commodity; the trader's spot and forward positions in contracts priced to a cash market index that includes quotations or prices for spot or forward contracts in the referenced energy contract's underlying commodity; the trader's positions in swaps priced in relation to the referenced energy contract or the contract's underlying commodity; and the trader's positions in other physically or financially settled contracts related to the trader's positions held pursuant to the conditional-spot-month position limit. The collection of this information would facilitate the Commission's surveillance program with respect to detecting and deterring trading activity that may tend to cause sudden or unreasonable fluctuations or unwarranted changes in the prices of the referenced energy contracts and their underlying commodities during the spot-month.

G. Exemptions and Related Requirements

1. *Bona Fide* Hedges

Proposed regulation 151.3(a) would establish three exemptions for the following transactions and positions: (i) *Bona fide* hedging transactions generally consistent with paragraphs (1) and (2) of regulation 1.3(z); (ii) swap dealer risk management transactions outside of the spot-month that are held to offset risks associated with certain swap agreements; and (iii) positions that would be in compliance with the speculative position limits when adjusted by an appropriate contemporaneous risk factor.

As proposed, a reporting market may establish an exemption process for traders holding positions in proprietary accounts that are shown to be *bona fide* hedging positions consistent with, but that may differ from (to the extent such differences are consistent with commercial activity in the physical energy markets), paragraphs (1) and (2) of regulation 1.3(z). As is currently the case for traders seeking exemptions from exchange-set spot-month position limits applicable to the referenced energy contracts, the Commission intends for traders seeking such *bona fide* hedging transactions to apply to a reporting market for exemptions from the applicable spot and non-spot-month limits. The Commission would audit this process to ensure that the reporting markets act appropriately in reviewing and acting on trader *bona fide* hedge exemption requests. In this manner, the Commission would also enable a reporting market to act expeditiously on exemption requests.

Under the proposed regulations, traders holding positions pursuant to a *bona fide* hedge exemption would generally be prohibited from also trading speculatively. If *bona fide* hedging positions outside the spot month exceed twice an otherwise applicable all-months-combined or single-month position limit, then such traders would also be prohibited from holding positions as swap dealers. In contrast, however, traders holding positions in the spot-month pursuant to a *bona fide* hedge exemption would not be prohibited from holding positions speculatively outside the spot month. The intent of this proposed exception is to not affect liquidity generated by speculative trading outside the spot month that would otherwise be prohibited by virtue of a trader's need to invoke a hedge exemption to exceed the lower spot-month position limits.

These "crowding out" provisions would restrict a trader controlling large positions used for hedging from also entering into large speculative positions or large swap dealer risk management positions. The proposed regulations would not impede a trader's ability to engage in *bona fide* hedging in any way,

but would limit a trader's ability to acquire swap dealer risk management positions or speculative positions when that trader holds very large positions pursuant to a *bona fide* hedge exemption.

Proposed regulation 20.01 sets forth reporting requirements for persons that would acquire positions pursuant to the *bona fide* hedge exemption of proposed regulation 151.3(a)(1). Specifically, this section would require such persons to file a completed CFTC Form 40 and Part B of new CFTC Form 404. Part B of CFTC Form 404 would collect information on: The quantity of stocks owned of the commodity that underlies the relevant referenced energy contract and its products and by-products; the ownership of shares of an investment vehicle that holds or owns the referenced energy contract or the commodity that underlies the referenced energy contract and its products and by-products; the quantity of fixed price purchase and sale commitments on the relevant referenced energy contract's commodity; and, for anticipatory hedging transactions, annual sales or requirements for the preceding three complete fiscal years and anticipated sales or requirements of such commodity for the period hedged. For cross-hedge positions, traders would be required to report the relevant commercial activity in terms of the actual or anticipated quantity of the cross-hedged commodity, and on a converted basis, equivalent positions in the relevant referenced energy contract. The Commission notes that this proposed data collection is consistent with data currently collected in grain and cotton markets using CFTC Forms 204 and 304, respectively, pursuant to part 19 of the Commission's regulations.

2. Swap Dealers

Swap dealers can perform an important economic function by taking on risks to accommodate the specific hedging and risk management needs of various customers. Swap dealers often are able to aggregate and standardize these otherwise particularized risks, and in turn, enter into commodity futures and option contracts to manage them. Accordingly, under the regulations as proposed, swap dealers may apply to the Commission for an exemption from the proposed speculative position limits for positions held outside of the spot month to manage the risks associated with swap agreements entered into to accommodate swap customers. Proposed regulation 151.1 would define "swap agreement" to have the same meaning as in current Commission regulation 35.1(b)(1).[79] Proposed regulation 151.1 would also define "swap dealer" to mean "any person who, as a significant part of its business, holds itself out as a dealer in swaps, makes a market in swaps, regularly engages in the purchase of swaps and their resale to customers in the ordinary course of a business, or engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps."

The proposed swap dealer exemption would be limited to twice an applicable all-months-combined or single non-spot month speculative position limit. Further, traders would be required to aggregate positions held as swap dealer risk management transactions with net speculative positions for the purpose of determining compliance with the proposed Federal speculative position limits. As with *bona fide* hedgers that hold positions in excess of the proposed limits, swap dealers holding large positions pursuant to the proposed swap dealer exemption would be unable to also take on positions as speculators. In effect, this proposed "crowding out" provision would restrict a trader controlling a large position used for swap risk management from also entering into large speculative positions.

Proposed regulation 1.45 sets forth the application procedure for swap dealers that would seek an exemption from the proposed Commission-set speculative position limits. Specifically, this regulation would require a person to file a completed CFTC Form 40, an initial application and an annual update to certify that the person remains a swap dealer, as defined in proposed regulation 151.1. The exemption would require the applicant to consent to the publication of the fact that such person received a swap dealer exemption from the Commission. Such publication would be made only once a year and would not include the identity of a swap dealer that first received an exemption within the six calendar months preceding a publication. Furthermore, the publication would not include any information that would disclose the specific commodities for which the swap dealer has sought an exemption. In this regard, the Commission reiterates that it will protect all proprietary information in accordance with the Freedom of Information Act and part 145 of the Commission's regulations, headed "Commission Records and Information." In addition, the Commission emphasizes that section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized otherwise by the Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers."[80]

Proposed regulation 20.02 sets forth reporting requirements for persons who would receive a swap dealer limited risk management exemption pursuant to proposed regulation 151.3(a)(2). Specifically, the proposed regulation would require swap dealers to file monthly a completed Form 404 Part C with the Commission and with any registered entity on which the swap dealer's referenced energy contract positions are listed. The monthly report would include, for each day, swap positions based upon the commodity underlying the referenced energy contracts that are held in proprietary and customer accounts and a summary of dealing and trading activity in swaps based upon the commodity underlying the referenced energy contracts. Furthermore, proposed regulation 20.02 would require the swap dealer to file a supplemental report whenever it establishes a larger position in referenced energy contracts than previously reported. In addition to the above reporting requirements, traders that receive a swap dealer limited risk management exemption must also maintain complete books and records relating to their swap dealing activities (including transaction data) and make such books and records, along with a list of counterparties to customer swap agreements that support and substantiate the need to offset swap agreement risks on reporting markets, available to the Commission upon request.

3. Exemptions for Delta-Adjusted Positions

The Commission understands that option risk factors continuously change with movements in the price of an underlying futures contract. As the price of the underlying futures contract changes, a trader offsetting the risk of an options position through a delta-neutral position in the underlying futures contract may need to adjust the futures position substantially on an intra-day basis to maintain a risk neutral position. As currently defined in regulation 150.1, delta-neutrality is recognized by reference to the previous day's risk factor. Proposed regulations 151.3 and 20.03 would set forth the exemption and reporting requirements for persons whose positions would have exceeded the Federal speculative position limit

[79] 17 CFR 35.1(b)(1).

[80] *See* 7 U.S.C. 12(a)(1).

for a referenced energy contract when adjusted by the previous day's risk factors (deltas), but that would not exceed such a limit when positions are calculated using an appropriate contemporaneous risk factor. The reporting requirements, as proposed, would include the submission of complete position data to demonstrate that such positions remained within an otherwise applicable speculative position limit when adjusted by an appropriate and contemporaneous risk factor.

H. Account Aggregation

Proposed regulation 151.4 would establish account aggregation standards specifically for positions in referenced energy contracts. Under the proposed standards, the Federal position limits in referenced energy contracts would apply to all positions in accounts in which any person, directly or indirectly, has an ownership or equity interest of 10% or greater or, by power of attorney or otherwise, controls trading. Proposed regulation 151.4 includes a limited exemption for positions in pools in which a trader that is a limited partner, shareholder or similar person has an ownership or equity interest of less than 25% unless the trader in fact controls trading that is done by the pool. Proposed regulation 151.4 would also treat positions held by two or more persons acting pursuant to an express or implied agreement or understanding the same as if the positions were held by, or the trading of the positions were done by, a single person. Accordingly, the proposed regulations would aggregate positions in accounts at both the account owner and controller levels.

In contrast to the disaggregation exemptions of current regulations 150.3(a)(4) and 150.4, eligible entities (such as mutual funds, commodity pool operators and commodity trading advisors) and futures commission merchants will not be permitted to disaggregate positions pursuant to the independent account controller framework established in part 150 of the Commission's regulations. The current account disaggregation exceptions for the agricultural contracts enumerated in regulation 150.2, may be incompatible with the proposed Federal speculative position limit framework, however, and used to circumvent its requirements.

The proposed framework sets high position levels that are at the outer bounds of the largest positions held by market participants, permits for the netting of positions across reporting markets and within contracts of the same class and in addition, includes a conditional-spot-month limit for cash-settled contracts and exemptions for *bona fide* hedgers, swap dealers and delta-adjusted positions. Accordingly, an exemption, such as the eligible entity exemption, that would allow traders to establish a series of positions each near a proposed outer bound position limit, without aggregation, may not be appropriate. Instead, proposed regulation 151.4 would establish a clear general account aggregation standard and a clear exception thereto for passive pool participants and similar investors.

VII. The CME Group's Proposal

In a concept paper published in September of 2009, the CME Group suggested an alternative position limit framework that would require each reporting market to set position limits separately without inter-exchange aggregation.[81] The single-month and all-months-combined limits, under the CME's proposal, would apply collectively to physically-delivered contracts and cash-settled contracts on a referenced energy commodity, including spread positions within the same contract. The level of the limits would be based on the collective open interest of the lead month (*i.e.,* the month with the highest level of open interest) in such contracts at that reporting market.

The CME Group also suggested that each reporting market set a single-month limit at 10% of the first 25,000 contracts of that reporting market's open interest with a 5% marginal increase for open interest in excess of 25,000 contracts at that reporting market. The CME Group suggested that the all-months-combined limit be set at 150% of the single-month limit and suggested establishing a flexible concentration limit in deferred-month contracts. Under the CME's proposed approach, a suggested concentration limit of 25% of open interest would be applicable in a single month that has developed liquidity.[82]

With respect to applying aggregate limits, the CME Group suggested that the CFTC establish and enforce an aggregate limit across all reporting markets, conditioned on the CFTC gaining authority to impose limits on OTC trading and on the CFTC developing a means to minimize the impact of potential transfers of trading to foreign jurisdictions or the physical markets. With respect to the aggregation of positions, the CME Group proposed that the aggregation standards of Commission regulation 150.4 apply to the aggregate limits.

By way of comparison, the Commission's proposed limits would apply aggregately across all exchanges that list a referenced energy contract and separately to physically-delivered contracts and cash-settled contracts that are listed by a particular reporting market. The Commission's proposed class-based limits would prevent the establishment of excessively large positions in a single class and, thereby, would reduce the potential for price distortions.

Also, by way of contrast to the CME Group's approach, the level of limits proposed by the Commission would be based on the sum of the open interest in all months, rather than only the lead month's open interest as proposed by the CME. By using the entire open interest, the Commission's proposal would avoid creating an incentive for traders to shift open interest into the lead month in an attempt to increase the level of the limits. Furthermore, rather than considering only a reporting market's open interest, the Commission's proposal would establish limit levels that reflect both aggregated open interest on all reporting markets and open interest on an individual reporting market. This tiered approach would provide an opportunity for small markets to grow, while establishing a prudential all-months limit for a class of contracts of no more than 30% of a reporting market's open interest in a class of contracts as defined in proposed regulation 151.1. The class limit, as proposed by the Commission, would be capped at a formula-determined level based on the open interest in all reporting markets in a referenced energy contract. The 30% level was selected in light of the expected opportunity for arbitrage across classes and the cap was set using the traditional all-months position limit formula in regulation 150.5(c)(2).

As discussed previously, the Commission's proposal first establishes an all-months-combined limit, then sets a single-month limit at two-thirds of the level of that all-months-combined limit. This is the same ratio between limits if first established in a single-month limit, as proposed by the CME, and then multiplied by 150% to arrive at an all-months-combined position limit. This two-thirds ratio, as proposed by the Commission, is therefore the same ratio that is proposed by the CME Group and consistent with the ratio between the single-month limits and the all-month-combined limits in the existing Federal agricultural positions limits which

[81] *See,* "Excessive Speculation and Position Limits in Energy Derivatives Markets," CME Group, at page 10, *http://www.cmegroup.com/company/files/PositionLimitsWhitePaper.pdf.*

[82] The concept paper did not specify a method to determine when a contract month had developed liquidity.

range from a low of 61% to a high of 77%. The table below provides a comparison of position limits as they would be set under the proposed Commission and CME Group approaches to establishing speculative position limits:

PROPOSED FEDERAL SPECULATIVE POSITION LIMITS FOR REFERENCED ENERGY CONTRACTS

Referenced energy contract	Class of contract	All-months-combined (AMC) average open interest (January 2008–December 2008)	AMC limit	Single-month limit
NYMEX Light Sweet Crude Oil	NYMEX Physical Delivery	2,881,901	98,100	65,400
	NYMEX Cash-Settled	963,871	98,100	65,400
	Aggregate Limit	3,845,772	98,100	65,400
NYMEX New York Harbor Gasoline Blendstock (RBOB).	NYMEX Physical Delivery	252,564	9,000	6,000
	NYMEX Cash-Settled	29,306	8,800	5,900
	Aggregate Limit	281,870	9,000	6,000
NYMEX New York Harbor No. 2 Heating Oil.	NYMEX Physical Delivery	254,442	10,100	6,800
	NYMEX Cash-Settled	73,996	10,100	6,800
	Aggregate Limit	328,438	10,100	6,800
NYMEX Henry Hub Natural Gas	NYMEX Physical Delivery	1,236,257	132,700	88,500
	NYMEX Cash-Settled	3,088,239	132,700	88,500
	ICE Cash-Settled	904,754	132,700	88,500
	Aggregate Limit	5,229,250	132,700	88,500

PROPOSED ENERGY SPECULATIVE LIMITS BY CME GROUP

Reference energy contract	Exchange	Average lead month open interest January 2008–December 2008)	All-months-combined limit	Single-month limit
NYMEX Light Sweet Crude Oil	NYMEX	841,607	65,000	43,400
NYMEX New York Harbor Gasoline Blendstock (RBOB).	NYMEX	107,439	10,000	6,700
NYMEX New York Harbor No. 2 Heating Oil.	NYMEX	98,977	9,300	6,200
NYMEX Henry Hub Natural Gas	NYMEX	505,220	39,800	26,600
	ICE	124,860	11,300	7,500

VIII. Request for Comment

The Commission requests comment on all aspects of this proposal, and particularly requests comments on the following issues and responses to the following questions:

1. Are Federal speculative position limits for energy contracts traded on reporting markets necessary to "diminish, eliminate, or prevent" the burdens on interstate commerce that may result from position concentrations in such contracts?

2. Are there methods other than Federal speculative position limits that should be utilized to diminish, eliminate, or prevent such burdens?

3. How should the Commission evaluate the potential effect of Federal speculative position limits on the liquidity, market efficiency and price discovery capabilities of referenced energy contracts in determining whether to establish position limits for such contracts?

4. Under the class approach to grouping contracts as discussed herein, how should contracts that do not cash settle to the price of a single contract, but settle to the average price of a sub-group of contracts within a class be treated during the spot month for the purposes of enforcing the proposed speculative position limits?

5. Under proposed regulation 151.2(b)(1)(i), the Commission would establish an all-months-combined aggregate position limit equal to 10% of the average combined futures and option contract open interest aggregated across all reporting markets for the most recent calendar year up to 25,000 contracts, with a marginal increase of 2.5% of open interest thereafter. As an alternative to this approach to an all-months-combined aggregate position limit, the Commission requests comment on whether an additional increment with a marginal increase larger than 2.5% would be adequate to prevent excessive speculation in the referenced energy contracts. An additional increment would permit traders to hold larger positions relative to total open positions in the referenced energy contracts, in comparison to the proposed formula. For example, the Commission could fix the all-months-combined aggregate position limit at 10% of the prior year's average open interest up to 25,000 contracts, with a marginal increase of 5% up to 300,000 contracts and a marginal increase of 2.5% thereafter. Assuming the prior year's average open interest equaled 300,000 contracts, an all-months-combined aggregate position limit would be fixed at 9,400 contracts under the proposed rule and 16,300 contracts under the alternative.

6. Should customary position sizes held by speculative traders be a factor in moderating the limit levels proposed by the Commission? In this connection, the Commission notes that current regulation 150.5(c) states contract markets may adjust their speculative

limit levels "based on position sizes customarily held by speculative traders on the contract market, which shall not be extraordinarily large relative to total open positions in the contract * * *"

7. Reporting markets that list referenced energy contracts, as defined by the proposed regulations, would continue to be responsible for maintaining their own position limits (so long as they are not higher than the limits fixed by the Commission) or position accountability rules. The Commission seeks comment on whether it should issue acceptable practices that adopt formal guidelines and procedures for implementing position accountability rules.

8. Proposed regulation 151.3(a)(2) would establish a swap dealer risk management exemption whereby swap dealers would be granted a position limit exemption for positions that are held to offset risks associated with customer initiated swap agreements that are linked to a referenced energy contract but that do not qualify as *bona fide* hedge positions. The swap dealer risk management exemption would be capped at twice the size of any otherwise applicable all-months-combined or single non-spot-month position limit. The Commission seeks comment on any alternatives to this proposed approach. The Commission seeks particular comment on the feasibility of a "look-through" exemption for swap dealers such that dealers would receive exemptions for positions offsetting risks resulting from swap agreements opposite counterparties who would have been entitled to a hedge exemption if they had hedged their exposure directly in the futures markets. How viable is such an approach given the Commission's lack of regulatory authority over the OTC swap markets?

9. Proposed regulation 20.02 would require swap dealers to file with the Commission certain information in connection with their risk management exemptions to ensure that the Commission can adequately assess their need for an exemption. The Commission invites comment on whether these requirements are sufficient. In the alternative, should the Commission limit these filing requirements, and instead rely upon its regulation 18.05 special call authority to assess the merit of swap dealer risk management exemption requests?

10. The Commission's proposed part 151 regulations for referenced energy contracts would set forth a comprehensive regime of position limit, exemption and aggregation requirements that would operate separately from the current position limit, exemption and aggregation requirements for agricultural contracts set forth in part 150 of the Commission's regulations. While proposed part 151 borrows many features of part 150, there are notable distinctions between the two, including their methods of position limit calculation and treatment of positions held by swap dealers. The Commission seeks comment on what, if any, of the distinctive features of the position limit framework proposed herein, such as aggregate position limits and the swap dealer limited risk management exemption, should be applied to the agricultural commodities listed in part 150 of the Commission's regulations.

11. The Commission is considering establishing speculative position limits for contracts based on other physical commodities with finite supply such as precious metal and soft agricultural commodity contracts. The Commission invites comment on which aspects of the current speculative position limit framework for the agricultural commodity contracts and the framework proposed herein for the major energy commodity contracts (such as proposed position limits based on a percentage of open interest and the proposed exemptions from the speculative position limits) are most relevant to contracts based on other physical commodities with finite supply such as precious metal and soft agricultural commodity contracts.

12. As discussed previously, the Commission has followed a policy since 2008 of conditioning FBOT no-action relief on the requirement that FBOTs with contracts that link to CFTC-regulated contracts have position limits that are comparable to the position limits applicable to CFTC-regulated contracts. If the Commission adopts the proposed rulemaking, should it continue, or modify in any way, this policy to address FBOT contracts that would be linked to any referenced energy contract as defined by the proposed regulations?

13. The Commission notes that Congress is currently considering legislation that would revise the Commission's section 4a(a) position limit authority to extend beyond positions in reporting market contracts to reach positions in OTC derivative instruments and FBOT contracts. Under some of these revisions, the Commission would be authorized to set limits for positions held in OTC derivative instruments and FBOT contracts.[83] The Commission seeks comment on how it should take this pending legislation into account in proposing Federal speculative position limits.

14. Under proposed regulation 151.2, the Commission would set spot-month and all-months-combined position limits annually.

a. Should spot-month position limits be set on a more frequent basis given the potential for disruptions in deliverable supplies for referenced energy contracts?

b. Should the Commission establish, by using a rolling-average of open interest instead of a simple average for example, all-months-combined position limits on a more frequent basis? If so, what reasons would support such action?

15. Concerns have been raised about the impact of large, passive, and unleveraged long-only positions on the futures markets. Instead of using the futures markets for risk transference, traders that own such positions treat commodity futures contracts as distinct assets that can be held for an appreciable duration. This notice of rulemaking does not propose regulations that would categorize such positions for the purpose of applying different regulatory standards. Rather, the owners of such positions are treated as other investors that would be subject to the proposed speculative position limits.

a. Should the Commission propose regulations to limit the positions of passive long traders?

b. If so, what criteria should the Commission employ to identify and define such traders and positions?

c. Assuming that passive long traders can properly be identified and defined, how and to what extent should the Commission limit their participation in the futures markets?

d. If passive long positions should be limited in the aggregate, would it be feasible for the Commission to apportion market space amongst various traders that wish to establish passive long positions?

e. What unintended consequences are likely to result from the Commission's implementation of passive long position limits?

16. The proposed definition of referenced energy contract, diversified commodity index, and contracts of the same class are intended to be simple definitions that readily identify the affected contracts through an objective and administerial process without

[83] *See, e.g.,* the Over-the-Counter Derivatives Markets Act of 2009 (OCDMA), H.R. 3795, 111th Congress, 1st Session (2009). OCDMA would also abolish the DTEF, ECM and ECM–SPDC market categories.

relying on the Commission's exercise of discretion.

a. Is the proposed definition of contracts of the same class for spot and non-spot months sufficiently inclusive?

b. Is it appropriate to define contracts of the same class during spot months to only include contracts that expire on the same day?

c. Should diversified commodity indexes be defined with greater particularity?

17. Under the proposed regulations, a swap dealer seeking a risk management exemption would apply directly to the Commission for the exemption. Should such exemptions be processed by the reporting markets as would be the case with *bona fide* hedge exemptions under the proposed regulations?

18. In implementing initial spot-month speculative position limits, if the notice of proposed rulemaking is finalized, should the Commission:

a. Issue special calls for information to the reporting markets to assess the size of a contract's deliverable supply;

b. Use the levels that are currently used by the exchanges; or

c. Undertake an independent calculation of deliverable supply without substantial reliance on exchange estimates?

IX. Related Matters

A. Cost Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its actions before issuing new regulations under the Act. Section 15(a) does not require the Commission to quantify the costs and benefits of new regulations or to determine whether the benefits of adopted regulations outweigh their costs. Rather, section 15(a) requires the Commission to consider the cost and benefits of the subject regulations. Section 15(a) further specifies that the costs and benefits of new regulations shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of the market for listed derivatives; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that, notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The proposed regulatory framework for positions in the referenced energy contracts, as defined by the proposed regulations, would impose certain compliance costs on Commission-regulated exchanges and traders that hold large positions in the referenced energy contracts. In addition to the compliance costs that are directly related to the proposed regulations, the proposed position limits and their concomitant limitation on trading activity could impose certain general but significant costs. The proposed position limits could cause unintended consequences by decreasing liquidity in the markets for the referenced energy contracts, impairing the price discovery process in these markets, and pushing large positions to trading venues over which the Commission has no direct regulatory authority.

Based on data received by the Commission's large trader reporting system, the Commission believes the proposed position limits would accommodate the normal course of speculative positions in markets for the referenced energy contracts. Commission data indicates that possibly ten traders, including traders that hold positions pursuant to exchange-approved *bona fide* hedge exemptions, could be affected by the proposed limits. For the reasons discussed below, the Commission anticipates that the compliance costs associated with the proposed limits and their impact on the efficiency of the markets for the referenced energy contracts would be minimal.

The proposed spot-month position limits, although applicable to a class of contracts and across reporting markets, are consistent with current exchange-set spot-month position limits that have been implemented and enforced by NYMEX and ICE pursuant to DCM and ECM–SPDC core principles and Commission guidance. In addition, both NYMEX and ICE implement position accountability rules for positions outside the spot month and routinely monitor and solicit reports from large traders. The affected exchanges and large traders therefore are accustomed to an existing compliance system for large positions and the processing of hedge and spread exemptions from exchange-set spot-month position limits. In addition, a significant portion of the affected traders are currently subject to the Commission's large trader reporting system and should have compliance systems in place to accommodate any new potential regulatory requirements. For these reasons, the compliance costs associated with the proposed limits should be minimal.

Section 4a(a) has identified excessive speculation that causes unwarranted fluctuations in the price of a commodity as an undue burden on commerce. Accordingly section 4a(a) of the Act gives the Commission the ability to establish a position limit framework as a prophylactic measure against sudden or unreasonable price fluctuations or unwarranted price changes in accordance with the purposes and findings of the Act. The Congressional endorsement of the Commission's prophylactic use of speculative position limits extends to any commodity and does not require a specific finding of an extant undue burden on interstate commerce.

A primary intent of the proposed position limit framework is to prevent a single trader or several traders from acquiring large or concentrated positions that may cause unwarranted, sudden or unreasonable fluctuations in the price of energy commodities. The Commission is concerned that concentrated positions at or near the proposed limits may directly lead to market disruptions causing unwarranted, sudden or unreasonable fluctuations in the price of energy commodities.

Another concern regarding the existence of large speculative positions is the possibility for disruption across markets or trading platforms listing similar or linked products. Because individual markets have knowledge of positions only on their own trading platforms, it is difficult for them to assess the full impact of a trader's activities. In recognition of this, the proposed framework also would apply to trading done in linked and economically similar contracts across markets. The Commission notes that it has the unique capacity for monitoring trading and implementing remedial measures across interconnected futures and option markets in the referenced energy contracts. The position limits, as proposed, are purposefully set at the outer bounds of the levels that speculators are likely to acquire in order to avoid disrupting or interfering with beneficial trading activity. Still, the proposed regulations are intended to fully achieve the prophylactic purpose of section 4a(a) of the Act.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* requires that agencies consider the impact of their regulations on small businesses. The requirements related to the proposed amendments fall mainly on registered entities, exchanges, futures commission merchants, clearing members, foreign

brokers, and large traders. The Commission has previously determined that exchanges, futures commission merchants and large traders are not "small entities" for the purposes of the RFA.[84] Similarly, clearing members, foreign brokers and traders would be subject to the proposed regulations only if carrying or holding large positions. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the actions proposed to be taken herein would not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

Certain provisions of the proposed regulations would result in new collection of information requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA"). The Commission therefore is submitting this proposal to the Office of Management and Budget ("OMB"), along with proposed new CFTC Form 404, for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

The title for this proposed collection of information is "Regulation 1.45 and Parts 20 and 151—Position Limit Framework For Referenced Energy Contracts" (OMB control number 3038–NEW).

If adopted, responses to this collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, headed "Commission Records and Information." In addition, the Commission emphasizes that section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers."[85]

Under the proposed regulations, reporting markets listing, and market participants trading, the referenced energy contracts would be subject to the position limit framework established by proposed part 151 and the application and reporting requirements of proposed regulation 1.45 and part 20. Proposed regulation 1.45 sets forth the application procedure for swap dealers that would seek an exemption from the proposed Commission-set Federal speculative position limits for referenced energy contracts. Proposed part 20 would require similar reports from persons holding large positions under the proposed conditional-spot-month position limit, as *bona fide* hedgers, as swap dealers, and as traders with certain delta-adjusted positions. The Commission estimates that affected traders, as a result of their diversified business structure, would be subject to most or all of the requirements and exemptions of proposed regulation 1.45 and parts 20 and 151.

Should the proposed regulations be adopted, the total number of traders that would be subject to the regulations is estimated at 10, with each providing an estimated 20 reports to the Commission at an estimated compliance time of four hours per response. Accordingly, the Commission estimates the aggregate annual burden that would be imposed by the regulations, as proposed, to be 800 hours. The Commission specifically notes that the estimated annual burden provided on the affected exchanges and traders is in addition to, and does not include, costs incurred from compliance with other regulatory and operational requirements. The Commission invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

You may submit your comments directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRA-submissions@omb.eop.gov.* Please provide the Commission with a copy of your comments so that we can summarize all written comments and address them in any subsequent notice of rulemaking. Refer to the Addresses section of this notice for comment submission instructions to the Commission. You may obtain a copy of the supporting statements for the collection of information discussed above by visiting RegInfo.gov. OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this notice. Consequently, a comment to OMB is most assured of being fully considered if received by OMB (and the Commission) within 30 days after the publication of this notice of proposed rulemaking.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

17 CFR Part 20

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 151

Position limits, *Bona fide* hedge positions, Spread exemptions, Energy commodities.

In consideration of the foregoing, pursuant to the authority contained in the Commodity Exchange Act, the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Pub. L. No. 110–246, 122 Stat. 1624 (June 18, 2008).

2. Add § 1.45 in part 1 to read as follows:

§ 1.45. Application for a swap dealer exemption.

(a) Persons seeking an exemption from the speculative position limits established by the Commission for referenced energy contracts under § 151.2 of this chapter, pursuant to an exemption for swap dealers under § 151.3(a)(2) of this chapter, shall:

(1) File an initial application for an exemption and, thereafter, update such application annually, as the Commission shall require;

(2) Provide as part of the application, all information required by the Commission, including but not limited to:

(i) A completed Form 40 along with the information required under § 18.04 of this chapter;

(ii) A certification that the person is a swap dealer as defined in § 151.1 of this chapter; and

[84] 47 FR 18618 (April 30, 1982).

[85] 7 U.S.C. 12(a)(1).

(iii) Specific consent to having their name published on the Commission's Web site (*http://www.cftc.gov*) as having received a swap dealer exemption from the speculative position limits; *provided however,* that such list shall be published no more than once annually, that no publication of the name of a swap dealer shall be made earlier than six calendar months following the date on which the exemption was granted, and that such publication shall not disclose the related commodities in which the person is swap dealer or any other information provided by the swap dealer to the Commission that would be inconsistent with section 8(a)(1) of the Act; and

(3) Comply with the reporting requirements of § 20.02 of this chapter.

(b) *Form, manner and time of filing.*

(1) An application under paragraph (a) of this section shall be submitted in the format and in the manner and within the time specified by the Commission.

(2) The Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight and to such members of the Commission's staff acting under the Director's direction as the Director may designate, the authority to specify the format, manner and time period for applications to be submitted under paragraph (a) of this section. The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

3. Add part 20 to read as follows:

PART 20—REPORTS IN CONNECTION WITH POSITIONS IN REFERENCED ENERGY CONTRACTS

Sec.

20.00 Conditional-spot-month position limit.
20.01 *Bona fide* hedging.
20.02 Reports from swap dealers.
20.03 Delta-adjusted positions.
20.04 Form, manner and time of filing.

Authority: 7 U.S.C. 1a, 2, 2a, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 12a, 19 and 21, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

§ 20.00 Conditional-spot-month position limit.

(a) *Information required.* All persons that acquire positions in a referenced energy contract pursuant to the conditional-spot-month position limit of § 151.2(a)(2) of this chapter shall submit to the Commission a Form 40 and provide the information required under § 18.04 of this chapter.

(b) *Additional cash and derivatives position data.* All persons subject to paragraph (a) of this section shall also submit the following position data, net long or short, on Part A of Form 404:

(1) The trader's cash positions in contracts priced at a fixed price differential (including a zero differential) to the referenced energy contract or the contract's underlying commodity;

(2) The trader's cash positions in contracts priced to a cash market index that includes quotations or prices for spot or forward contracts in the referenced energy contract's underlying commodity;

(3) The trader's positions in cleared or bilateral swap agreements with a fixed price differential (including zero) to the referenced energy contract or the contract's underlying commodity; and

(4) Positions in any other physically or financially settled contracts that are economically related to the trader's positions that are acquired pursuant to the conditional-spot-month position limit.

§ 20.01 Bona fide hedging.

(a) *Information required.* All persons that acquire positions in a referenced energy contract pursuant to the *bona fide* hedge exemption of § 151.3(a)(1) of this chapter shall submit to the Commission a Form 40 and provide the information required under § 18.04 of this chapter.

(b) *Additional information on cash market activities.* All persons subject to paragraph (a) of this section shall also submit the following information on Part B of Form 404:

(1) The quantity of stocks owned of the commodity that underlies a referenced energy contract and its products and by-products;

(2) The quantity of fixed price purchase commitments open in such commodity and its products and by-products;

(3) The quantity of fixed price sale commitments open in such commodity and its products and by-products;

(4) For unsold anticipated commercial services or output directly connected to producing, transporting, refining, merchandising, marketing, or processing a commodity underlying a referenced energy contract:

(i) Annual sales of such services or output for the three complete fiscal years preceding the current fiscal year; and

(ii) Anticipated sales of such services or output for the period hedged; and

(5) For unfilled anticipated requirements:

(i) Annual requirements of such commodity for the three complete fiscal years preceding the current fiscal year; and

(ii) Anticipated requirements of such commodity for the period hedged.

(6) The shares of an investment vehicle, including, but not limited to, exchange-traded funds, registered investment companies, commodity pools and private investment companies, that holds or owns a referenced energy contract or the commodity that underlies a referenced energy contract and its products and by-products.

(c) *Conversion methodology.* Persons engaged in the hedging of commercial activity that does not involve the same quantity or commodity as the quantity or commodity associated with positions in referenced energy contracts shall furnish this information both in terms of the actual quantity and commodity used in the trader's normal course of business and in terms of the referenced energy contracts that are sold or purchased. In addition, such persons shall explain the methodology used for determining the ratio of conversion between the actual or anticipated cash positions and the trader's positions in referenced energy contracts.

§ 20.02 Reports from swap dealers.

(a) *Initial reports.* Persons who have received a swap dealer exemption pursuant to § 151.3(a)(2) of this chapter from the speculative position limits established by the Commission for referenced energy contracts under § 151.2 of this chapter shall provide on Part C of Form 404 to the Commission, and to any registered entity on which the swap dealer's referenced energy contract positions are listed, a monthly report including:

(1) Swap positions based upon the commodity underlying the referenced energy contracts separately for proprietary and customer accounts on a daily basis; and

(2) A daily summary of dealing and trading activity in swaps based upon the commodity underlying the referenced energy contracts.

(b) *Supplemental reports.* Whenever the risk management requirements of a swap dealer require it to increase its positions in referenced energy contracts from levels justified by information provided in its initial application under § 1.45 of this chapter or the swap dealer's most recent report submitted under this section, the swap dealer shall file, on the business day following the date on which such positions were acquired, a supplemental report in compliance with the requirements of

paragraph (a) of this section that supports the increase in position levels.

(c) *Recordkeeping.* Traders that receive a swap dealer exemption under § 151.3(a)(2) of this chapter shall maintain complete books and records relating to their swap dealing activities (including transactional data) and make such books and records, along with a list of counterparties to customer swap agreements that support and substantiate the need to offset swap agreement risks on reporting markets, available to the Commission upon request.

§ 20.03 Delta-adjusted positions.

(a) *Information required.* All persons with referenced energy contract positions in excess of the position limits of § 151.2 of this chapter that acquire such positions in reliance on § 151.3(a)(3) of this chapter shall submit to the Commission a Form 40 and provide the information required under § 18.04 of this chapter.

(b) *Additional information.* In addition, such persons shall provide the following on Part D of Form 404:

(1) A certification that their positions, in whole or in part, are in excess of the applicable limits as a result of the application of a futures-equivalent calculation that adjusts option positions by the previous day's risk factor, or delta coefficient; and

(2) Complete position data that demonstrates that the application of a contemporaneous risk factor, or delta coefficient, renders the trader compliant with the position limits of § 151.2 of this chapter on an adjusted basis.

§ 20.04 Form, manner and time of filing.

Unless otherwise instructed in this part or by the Commission or its designee, the Forms and information required to be filed under this part shall be submitted at such time and in a form and manner specified by the Commission. The Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight and to such members of the Commission's staff acting under the Director's direction as the Director may designate, the authority to specify the format, manner and time period within which the Forms and information required to be filed under this part shall be submitted to the Commission. The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

4. Add part 151 to read as follows:

PART 151—FEDERAL SPECULATIVE POSITION LIMITS FOR REFERENCED ENERGY CONTRACTS

Sec.

151.1 Definitions.
151.2 Position limits for referenced energy contracts.
151.3 Exemptions for referenced energy contracts.
151.4 Aggregation of positions.

Authority: 7 U.S.C. 1a, 2, 2a, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 12a, 19 and 21, as amended by Title XIII of the Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1624 (June 18, 2008).

§ 151.1 Definitions.

As used in this part—

Basis contract means a futures or option contract that is cash settled based on the difference in price of the same commodity (or substantially the same commodity) at different delivery points;

Calendar spread contract means a futures or option contract that represents the difference between the settlement prices in one month of a referenced energy contract and another month's settlement price for the same referenced energy contract;

Contracts of the same class mean referenced energy contracts (including option contracts on a futures-equivalent basis) on a single reporting market that are based on the same commodity and delivered in the same manner (cash-settled or physically-delivered), *provided however,* that during their spot month, contracts shall be considered contracts of the same class if, in addition, such contracts expire on the same trading day;

Diversified commodity index means a commodity index with price components that include energy as well as non-energy commodities, *provided however,* that futures and option contracts based on a diversified commodity index that incorporates the price of a commodity underlying a referenced energy contract's commodity which are used to circumvent the speculative position limits, shall be considered to be referenced energy contracts for the purpose of applying the position limits of § 151.2 of this chapter;

Inter-commodity spread contract means a futures or option contract that is based on the price difference between a referenced energy contract and another commodity contract;

Referenced energy contract means a physically-delivered or cash-settled futures or option contract, other than a basis contract or contract on a diversified commodity index, that is a:

(1) New York Mercantile Exchange Henry Hub natural gas contract (NG), or any other natural gas contract that is exclusively or partially based on a trading unit of 10,000 million British thermal units (mmBtu) of natural gas delivered at the Henry Hub pipeline interchange in Erath, Louisiana;

(2) New York Mercantile Exchange Light Sweet crude oil contract (CL), or any other crude oil contract that is exclusively or partially based on a trading unit of 1,000 U.S. barrels of light sweet crude oil delivered at the Cushing crude oil storage complex in Cushing, Oklahoma;

(3) New York Mercantile Exchange New York Harbor No. 2 heating oil contract (HO), or any other heating oil contract that is exclusively or partially based on a trading unit of 1,000 U.S. barrels of No. 2 fuel oil delivered at an ex-shore facility in New York Harbor;

(4) New York Mercantile Exchange New York Harbor gasoline blendstock (RBOB) contract, or any other gasoline contract that is exclusively or partially based on a trading unit of 1,000 U.S. barrels of reformulated gasoline blendstock for oxygen blend delivered at an ex-shore facility in New York Harbor; or

(5) Fraction or multiple of the contracts described in paragraphs (1) through (4) of this section, so that when viewed on a fractional basis or as a multiple, such contract is based on the same commodity in equivalent trading units;

Reporting market means a reporting market as defined in § 15.00 of this chapter;

Spot month means:

(1) For a contract that allows trading concurrently with the issuance of delivery notices, the futures contract next to expire during that period of time beginning at the close of trading on the trading day preceding the first day on which delivery notices can be issued to the clearing organization of a registered entity;

(2) For a contract that does not allow trading concurrently with the issuance of delivery notices, the futures contract next to expire during that period of time beginning at the close of trading on the third trading day preceding the last trading day; or

(3) For a contract that cash-settles based on the price of one or more physically-delivered contracts, the period of time that is the spot-month for such physically-delivered contracts;

Spread contract means either a calendar spread contract or an inter-commodity spread contract;

Swap agreement means a swap agreement as defined in § 35.1(b)(1) of this chapter;

Swap dealer means, solely for the purposes of this part and § 1.45 and part 20 of this chapter, any person who, as a significant part of its business, holds itself out as a dealer in swaps, makes a market in swaps, regularly engages in the purchase of swaps and their resale to customers in the ordinary course of a business, or engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps;

Unless specifically defined otherwise, the terms defined in § 150.1 of this chapter shall have the same meaning as they do in that section.

§ 151.2 Position limits for referenced energy contracts.

(a) *Spot-month position limits.* Except as otherwise authorized in § 151.3, no person may hold or control positions in contracts of the same class when such positions, net long or net short, are in excess of:

(1) For physically-delivered contracts, a *spot-month position limit,* fixed by the Commission at one-quarter of the estimated spot-month deliverable supply; or

(2) For contracts that cash settle based on prices of physically-delivered contracts, a *conditional-spot-month position limit,* fixed by the Commission at one-quarter of the estimated spot-month deliverable supply, *provided that,* a trader may, if permitted by reporting market rules adopted to implement this paragraph, acquire or hold spot-month positions equal to the product of the above specified level and the spot-month multiplier of five if the trader does not hold positions in spot-month physically-delivered referenced energy contracts and the trader complies with the reporting requirements of part 20 of this chapter.

(b) *All-months-combined and single-month limits.* Except as otherwise authorized in § 151.3, no person may hold or control positions in a referenced energy contract when such positions, net long or net short, are in excess of:

(1) *Aggregate position limits:*

(i) *An all-months-combined aggregate position limit,* across reporting markets, fixed by the Commission at 10% of the open interest of that referenced energy contract aggregated across all reporting markets up to an open interest level of 25,000 contracts with a marginal increase of 2.5% of aggregated open interest thereafter; or

(ii) *A single-month aggregate position limit* that is two-thirds of the position limit fixed pursuant to paragraph (b)(1)(i) of this section.

(2) *Reporting market position limits:*

(i) For a reporting market, *an all-months-combined position limit* for contracts of the same class that is the lower of the aggregate position limit for a referenced energy contract under paragraph (b)(1)(i) of this section or, for contracts of the same class, 30% of a class's average combined futures and delta-adjusted option month-end open interest for the most recent calendar year on that reporting market; or

(ii) For a reporting market, *a single-month position limit* for contracts of the same class that is two-thirds of the position limit fixed pursuant to paragraph (b)(2)(i) of this section, *provided however,* that such positions shall not be greater than two times the level of the position limit fixed pursuant to paragraph (b)(2)(i) of this section on a gross basis.

(c) *Minimum position limit.* The position limits of § 151.2(b)(2)(i) shall be replaced by an all-months-combined position limit, fixed by the Commission at the greater of 5,000 contracts or 1% of the open interest aggregated across all reporting markets, if the resulting position limit calculated under this paragraph is higher than an otherwise applicable position limit.

(d) *Deliverable supply.*

(1) Reporting markets listing physically-delivered referenced energy contracts are required to submit to the Commission an estimate of deliverable supply by the 31st of December of each calendar year.

(2) The estimate submitted under paragraph (d)(1) of this section shall be accompanied by a description of the methodology used to derive the estimate along with any statistical data supporting the reporting market's estimate of deliverable supply.

(3) The Commission shall base its fixing of spot-month position limits on the estimate provided under paragraph (d)(1) of this section unless the Commission determines to rely on its own estimate of deliverable supply.

(4) The Commission may base its initial fixing of spot-month position limits solely on its own estimates of deliverable supply.

(e) *Calculation of limits for the purposes of this section.*

(1) For the purpose of calculating positions under this section, referenced energy option contracts that do not settle into futures contracts shall be included in any calculation on a futures-equivalent basis and treated as futures contracts under the provisions of this section.

(2) Open interest shall be calculated by combining the month-end futures open interest and the open interest in its related option contract, on a delta-adjusted basis, for all months listed on a reporting market during the most recent calendar year.

(3) In determining or calculating all levels and limits under this section, a resulting number shall be rounded up to the nearest hundred.

(4) For the purpose of calculating position limits under this section, referenced energy contracts that are spread contracts, as defined by § 151.1, shall be excluded from any calculation of open interest.

(f) *Administrative process for fixing and publishing position limits.*

(1) The Commission shall fix the spot-month position limits (and estimates of deliverable supply) and the all-months-combined position limits under § 151.2, aggregately across all reporting markets and separately for each reporting market, by January 31st of each calendar year, *provided that,* the initial fixing of position limits may occur on a different date.

(2) The Commission hereby delegates, until such time as the Commission orders otherwise, to the Director of the Division of Market Oversight and to such members of the Commission's staff acting under the Director's direction as the Director may designate, the authority to fix the position limits to be established pursuant to paragraph (f)(1) of this section. The Director may submit to the Commission for its consideration any matter that has been delegated in this paragraph. Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in this paragraph.

(3) The fixed position limits shall be published on the Commission's Web site (*http://www.cftc.gov*) and shall become effective on the 1st day of March immediately following the fixing date (or 30 complete calendar days following an initial fixing of position limits under this part if such fixing is on a date other than the 31st of January) and shall remain effective until the last day of the immediately following February.

§ 151.3 Exemptions for referenced energy contracts.

(a) *Positions that may exceed limits.* The position limits set forth in § 151.2 may be exceeded to the extent that such positions are:

(1) Upon application to a reporting market for an exemption, positions (other than positions that are held to offset risks associated with swap agreements under paragraph (a)(2) of this section) held in a proprietary account (as defined in § 1.3(y) of this chapter) shown to be *bona fide* hedging transactions, as defined and approved

by a reporting market in a manner consistent with, but that may differ from (to the extent that such differences are consistent with commercial activity in the physical energy markets), §§ 1.3(z)(1) and (2) of this chapter, *provided that:*

(i) Traders holding positions outside the spot month, and traders holding spot-month positions with respect to spot-month positions only, that are greater than or equal to a position limit set under § 151.2 pursuant to a *bona fide* hedge exemption shall not also hold or control positions speculatively; and

(ii) Traders holding positions that are greater than or equal to twice a position limit set under to § 151.2 pursuant to a *bona fide* hedge exemption shall not also hold or control positions pursuant to an exemption under paragraph (a)(2) of this section;

(2) Upon application under § 1.45 of this chapter, swap dealer risk management transactions outside of the spot month that are held to offset risks associated with swap agreements, which are entered into to accommodate swap customers and are either directly linked to the referenced energy contracts or the fluctuations in value of the swap agreements are substantially related to the fluctuations in the value of the referenced energy contracts, and which do not exceed twice the applicable speculative position limits in all-months-combined or in any single non-spot-month, *provided that* traders holding positions under this paragraph shall not also hold or control positions speculatively when such the trader's total positions are greater than or equal to a position limit set under to § 151.2; or

(3) Subsequently demonstrated, in a report to be filed on the calendar day following the acquisition of such positions pursuant to part 20 of this chapter, to be below an applicable position limit once option contracts that are a part of a trader's overall position are adjusted by a contemporaneous risk factor or delta coefficient for such options.

(b) *Other exemptions.* The position limits set forth in § 151.2 of this chapter may be exceeded to the extent that such positions remain open and were entered into in good faith prior to the effective date of any rule, regulation, or order that specifies a limit.

(c) *Call for information.* Upon call by the Commission, the Director of the Division of Market Oversight or the Director's designee, any reporting market issuing, or any person claiming, an exemption from speculative position limits under this section must provide to the Commission such information as specified in the call relating to the positions owned or controlled by that person, trading done pursuant to the claimed exemption, the futures, options, over-the-counter, or cash market positions that support the claim of exemption, and the relevant business relationships supporting a claim of exemption.

§ 151.4 Aggregation of positions.

(a) *Positions to be aggregated.* The position limits set forth in § 151.2 of this chapter shall apply to:

(1) All positions in accounts in which any person, directly or indirectly, has an ownership or equity interest of 10% or greater or, by power of attorney or otherwise, controls trading; or

(2) Positions held by two or more persons acting pursuant to an expressed or implied agreement or understanding the same as if the positions were held by, or the trading of the positions were done by, a single person.

(b) *Positions in pools.* Positions in pools in which a trader that is a limited partner, shareholder or similar person has an ownership or equity interest of less than 25% need not be aggregated with other positions of the trader unless such person, by power of attorney or otherwise, controls trading that is done by the pool.

Issued by the Commission this 14th day of January 2010, in Washington, DC.

David Stawick,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix Statements

Statement of Gary Gensler Chairman, Commodity Futures Trading Commission Meeting of the Commodity Futures Trading Commission

The CFTC is charged with a significant responsibility to ensure the fair, open and efficient functioning of futures markets. Our duty is to protect both market participants and the American public from fraud, manipulation and other abuses. Central to these responsibilities is our duty to protect the public from the undue burdens of excessive speculation that may arise, including those from concentration in the marketplace.

The CFTC does not set or regulate prices. Rather, the Commission is directed to ensure that commodity markets are fair and orderly. It is for that reason that I support the staff's recommended rulemaking regarding position limits in the energy markets and exemptions for swap dealer risk management transactions.

The CFTC is directed in its original 1936 statute to set position limits to protect against the burdens of excessive speculation, including those caused by large concentrated positions. In that law—the Commodity Exchange Act (CEA)—Congress said that the CFTC "shall" impose limits on trading and positions as necessary to eliminate, diminish or prevent the undue burdens that may come as a result of excessive speculation. We are directed by statute to act in this regard to protect the American public.

A transparent and consistent playing field for all physical commodity futures should be the foundation of our regulations. Thus, position limits should be applied consistently to all markets and trading platforms and exemptions to them also should be consistent and well-defined.

While we currently set and enforce position limits on certain agriculture products, we do not for energy markets. Though there are some differences between energy markets and agricultural markets, those distinctions do not suggest to me that the federal government should set position limits on one and not the other.

When the CFTC set position limits in the past, the agency sought to ensure that the markets were made up of a broad group of market participants with a diversity of views. At the core of our obligations is promoting market integrity, which the agency has historically interpreted to include ensuring markets do not become too concentrated.

Position limits help to protect the markets both in times of clear skies and when there is a storm on the horizon. In 1981, the Commission said that "the capacity of any contract market to absorb the establishment and liquidation of large speculative positions in an orderly manner is related to the relative size of such positions, *i.e.,* the capacity of the market is not unlimited." I believe this is still true today.

The futures exchanges also have obligations with regard to the setting of position limits. As was explored in our summer hearings, though, the Commodity Futures Modernization Act (CFMA) changed the exchanges' obligations. They have to comply with a core principal that speaks to protecting against manipulation or congestion, "especially during trading in the delivery month." These core principles do not explicitly require the exchanges to set position limits to guard against the burdens of excessive speculation. The CEA, in section 4a, though, left the obligations of the CFTC unchanged with regard to setting position limits to protect against the possible burdens of excessive speculation. Our governing statute importantly distinguishes between these two distinct, but sometimes related, public policy goals—protecting against manipulation and protecting against possible burdens of excessive speculation. The CFMA clearly established that the exchanges had to address the first while the CFTC had a broader mandate to address both. Though the CFTC had in 1992 first allowed exchanges to establish accountability regimes, it was only in 2001 that they did so in lieu of position limits in the energy markets.

The past eight years have provided further evidence as to the difference. Accountability levels are regularly and repeatedly exceeded. In fact, they are neither stop signs nor even yield signs for market participants. As reviewed at our summer hearings, in the 12 months between July 2008 and June 2009,

accountability levels for individual months were exceeded in the four main energy contracts by 69 different traders, some exceeding the levels during every trading day in the period.

The staff recommendation builds upon the Commission's experience and previous guidance in setting position limits, particularly for agricultural commodities.

- Limits are set across the same contract month groupings: All-months-combined (AMC); single-month; and spot-month.
- Limits apply to aggregate positions in futures and options combined.
- There are exemptions for bona fide hedging transactions involving commodity inventory hedges and anticipatory purchases or sales of the commodity.

In addition, the proposed energy limits incorporate CFTC guidance to exchanges in setting speculative position limits:

- The basic formula for the level of the all-months-combined limit is the same—10% of the first 25,000 contracts of open interest plus 2.5% of open interest over 25,000 contracts.
- The approach to setting the level of the spot-month limit in the physical delivery contracts is the same—25% of the estimated deliverable supply.

The proposed energy Federal limits builds upon the Commission's experience in several ways:

- The proposed energy limits would be responsive to the size of the market and administratively reset on an annual basis, rather than remaining unchanged until a new rule is issued.
- The proposal extends contract aggregation by applying all-months-combined and single-month energy speculative position limits both to classes of contracts (all physical delivery or cash settled contracts in a commodity at a reporting market) and to positions held across all reporting markets.
- The proposed energy limits aggregate positions at the owner level rather than permitting disaggregation for independent account controllers.

I believe that the staff recommendation is a measured and balanced approach to setting position limits in the energy markets.

In addition to resetting position limits in the energy futures and options markets, the proposed rulemaking both addresses exemptions for *bona fide* hedgers and establishes a consistent framework for certain swap dealer risk management exemptions. The Commission and the exchanges currently grant relief from agriculture and energy position limits to swap dealers on a case-by-case basis via staff no-action letters or similar methods at the exchanges. The proposed rule would, for the first time, bring uniformity to swap dealer exemptions. Swap dealers would be required to file an exemption application and update the application annually. Exempted swap dealers also would be required to provide monthly reports of their actual risk management needs and maintain records that demonstrate their net risk management needs. The CFTC would publicly disclose the names of swap dealers that have filed for an exemption after a six-month delay.

This rule proposal is one step in a very important process. Our vote on the proposed rulemaking begins a 90-day public comment period. Many important questions are listed in the proposal, and we are all very interested to hear from the public on these significant issues.

I look forward to hearing from hedgers and speculators, dealers and exchanges and other market participants and economists regarding the proposal and how and if it would improve the functioning of the markets. I am also interested in hearing any changes that they may suggest.

As we vote to on a proposed rulemaking to set position limits in the energy futures and options markets, we also are working with Congress to bring comprehensive regulatory reform to the over-the-counter derivatives markets. I was pleased that the House included in the recently passed financial reform legislation enhanced authority for the CFTC to set aggregate position limits for over-the-counter derivatives contracts when they perform or affect a significant price discovery function with respect to regulated entities. While Congress continues to work on regulatory reform, it is important that the Commission continue its work under current authority to consider setting energy position limits. The CFTC is working in parallel with the legislative process.

I thank the staff and my fellow Commissioners for all of the preparation that went into the recommended rulemaking. I will now entertain a motion that the Commission issue a proposed rule to set position limits for futures and option contracts in the major energy markets and establish consistent, uniform exemptions for certain swap dealer risk management transactions.

Statement of Commissioner Michael V. Dunn Regarding the Notice of Proposed Rulemaking for Speculative Position Limits for Referenced Energy Contracts

Today I am voting to release the proposed notice of rulemaking entitled Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations. My vote to release this proposed rule should in no way be construed as an agreement with the opinions expressed in the proposal or to the approach advocated in setting these proposed position limits. Despite my serious reservations, I have agreed to the release of this proposal so that the public at-large has ample opportunity to voice their opinions and concerns on this topic.

At the close of the Commission's position limits hearings on August 5, 2009, I stated that:

[T]he CFTC does not have the authority to set speculative position limits in all of the venues that may be affected by excessive speculation, specifically over-the-counter markets (OTC) and on foreign boards of trade (FBOT). Unilateral Commission action in only the markets we currently regulate may not have the desired effect of reigning in excessive speculation in the futures market. Without similar steps in the OTC markets and on FBOTs, those seeking to evade the limits we set could simply move to venues outside our authority.

I believe this is still true today, and that forging ahead on a position limits regime for political expediency is not the course of action that this agency needs or one that promotes the health and integrity of the futures industry in the United States. The simple announcement of our hearings several months ago caused business to migrate to OTC markets and FBOTs currently outside our purview. This is an unacceptable consequence of regulation and is, I fear, a sign of things to come if this agency does not take a coordinated approach to bringing sensible regulation to the futures markets.

I think it needs to be made clear that the Proposed Position Limits do not set trading limitations on any particular class of investor, including passively managed long-only index funds. The Proposed Position Limits' sole objective is to prevent excessive speculation by a single entity. I would be very interested to hear from the public on whether this incremental approach best addresses the market wide concerns raised by those who participated in our hearings last summer.

I would like to reiterate that my vote to release this document should in no way be construed as an agreement of any kind to final rules setting federal speculative position limits on energy contracts. My commitment remains to accept comments and information during the next few months with an open mind, and to work with my fellow Commissioners to ensure that we have a functioning futures industry.

Statement of Commissioner Jill Sommers Regarding the Notice of Proposed Rulemaking for Speculative Position Limits for Referenced Energy Contracts

Dissenting

The Commission and its predecessors have grappled with the complex issues surrounding federal speculative position limits for many years in connection with transactions based on agricultural commodities. As prices rose across the board in virtually all commodities throughout 2007 and 2008, the Commission focused its attention on possible causes, including the influx of new traders into the markets, in particular swap dealers hedging the risk resulting from over-the-counter (OTC) business and traders seeking exposure to commodities as an asset class through passive, long-term investment in exchange traded funds (ETFs) and commodity index funds. Concerns were raised in numerous Congressional hearings that excessive speculation in both exchange-traded and OTC markets was to blame for rising prices, particularly in the energy sector. The Commission held three days of hearings in July and August of 2009 to discuss a number of different approaches and has received continuous feedback from the industry for the past several months. We now have before us a proposal from staff which would implement federal speculative position limits for futures and options contracts in certain energy commodities.

I dissent from issuing the proposal for the following reasons. I am concerned that hard positions limits may be imposed on exchange trading without similar limits in place for

OTC markets. Legislation giving us the authority to impose OTC limits may be enacted this year, but the timing and final form of such legislation is unknown. While I wholeheartedly support efforts to enhance our authority in this area, I am concerned that forging ahead with federal limits in a piecemeal fashion is unwise. I am especially concerned that doing so will have the perverse effect of driving portions of the market away from centralized trading and clearing at the very time we are urging all standardized OTC activity to be traded on-exchange or cleared. Likewise, I am concerned that, without global standards, trading will move to other financial centers around the world. A report issued by the United Kingdom's Financial Services Authority and HM Treasury last month urges caution in introducing a position limits regime. *See Financial Services Authority & HM Treasury, Reforming OTC Derivative Markets, A UK Perspective at 31–35 (Dec. 2009).* Clearly, more work is needed to achieve a uniform approach.

A delay in promulgating position limits will not leave the markets unprotected. The proposal before us "sets high position levels that are at the outer bounds of the largest positions held by market participants." Proposal at 59. Exchange position limits and accountability rules remain in place and will continue to trigger the first line of defense against potential market manipulations or other disruptions. Even if the proposed federal limits were enacted, exchanges would be obligated to begin monitoring positions on their markets well before traders reach the federal limits. Aggressive use of the Commission's surveillance authority in partnership with the exchanges should be sufficient to closely monitor and protect the integrity of the markets.

Finally, the proposal makes no distinction between passive ETF and index traders and speculators. While the proposal does seek comment on the feasibility of categorizing such traders differently, I am discouraged that we are no closer to an answer than we were prior to our 2009 hearings, the numerous Congressional hearings that focused on index trading, and the Commission's extensive collection of index investment data since June 2008, which it now publishes on a quarterly basis. There is no doubt that passive long-only investors do not behave as typical speculative traders. They have a unique footprint in the markets. If the data demonstrates that passive long traders are disrupting the markets, through the rolling of their positions or otherwise, the Commission should make an affirmative finding and tailor a solution that addresses the problem.

It is also my hope that if the Commission adopts the limits included in the proposal, that it also promulgate federal limits for all other commodities with a finite supply, such as metals and the agricultural commodities not currently subject to federal limits. The rationale given for the current proposal applies equally to contracts in those commodities. Another inconsistency that would result if the Commission adopts the proposed rulemaking is that swap dealers would continue to receive bona fide hedge exemptions for positions related to agricultural commodities subject to federal limits, but the new proposed risk management exemption regime would apply to positions related to the four energy commodities included in the proposal. A uniform policy would benefit not only the Commission and market participants from an operational efficiency standpoint, but would also enhance transparency by eliminating needless complexities in the process.

Statement of Commissioner Bart Chilton Regarding the Notice of Proposed Rulemaking for Speculative Position Limits for Referenced Energy Contracts

"*Moving Forward*"

During the last decade, while traditional hedgers and speculators increased their use of the futures markets, many new non-traditional participants entered the arena, bringing with them capital and a wealth of innovative approaches to trading. The trend helped fuel the economic engine of our democracy—a good and positive outcome. As markets and market participants evolve, the Commission has an inherent responsibility to examine the impact, as well as to proactively anticipate the potential impact, of changing dynamics on those markets we are entrusted to oversee.

There is certainly no consensus about the potential and net impact of new non-traditional speculators on commodity markets. Did the massive passives—very large traders who have no interest in the underlying physical commodity and have, in general, a fairly inactive long trading strategy—contribute to $147 barrel oil in 2008? Some say there is no impact on markets, others (like researchers at MIT, Rice and Princeton—and a new study out this week from Lincoln University of Missouri) absolutely disagree.

Regardless, what is important to remember is that having an impact is not equivalent to manipulation (or other abuse) under current law, rule or regulation; it is not per se negative. However, any conduct that potentially can distress markets, that has the propensity to create artificiality in the markets, needs to be understood and curbed as necessary.

The Commodity Exchange Act (CEA) has as its fundamental purpose the deterrence and prevention of fraud, market abuse and manipulation. To accomplish our mission requires vigilance and thoughtful consideration of the potential for market aberrations. It requires agile, balanced and prudent action in a timely manner—not usually the mark of government. Our role in striking the right balance with regard to the massive passives and other new dynamics in the futures industry requires that we not merely review and respond, but that we anticipate, deter and prevent.

That is why I support moving forward on the energy proposal before the Commission. This proposal strikes a reasonable balance. Simply put, it seeks to impose mandatory hard cap position limits. Doing so is not the mark of wild-eyed overzealous regulators. In fact, the position limits called for in the proposal are similar to limits already in effect for agricultural commodities. This proposal simply seeks to expand such mandatory hard cap position limits to four heavily traded energy contracts.

Specifically, the energy proposal would establish four different hard cap mandatory speculative position limits. They are: An exchange-specific spot-month limit; a single month limit; an all-months-combined limit; and an all-encompassing, cumulative U.S. exchange position limit for substantially similar-traded contracts. These limits would be dynamic in that they would be responsive to the size of the market and subject to annual recalculation by the Commission.

While I have been a staunch advocate for strong position limits, the levels set for the limits, in my opinion, actually err on the high side. The proposed limits will certainly be seen by some as higher than appropriate. However, should the limits prove inadequate, the agency can, and I hope will, recalibrate to ratchet them down or even increase them as deemed appropriate. The most important thing is to establish a thoughtful position limit system.

Furthermore, while the proposed limits err on the high side, such levels would still ensure that the very largest traders' positions, those with the greatest potential for causing market-contortions, would be limited. Moreover, if limits were set too low, there would be a possibility that trading migration could take place, transferring traders to over-the-counter markets or overseas exchanges. This is particularly noteworthy because Congress has yet to pass regulatory reform legislation that would grant the CFTC authority to properly regulate the over-the-counter markets—markets that are currently dark in that there is not government regulation or oversight. Hundreds of trillions of dollars are traded in these dark markets and they can influence the price that consumers pay for everything from gasoline, to a loaf of bread, to a home mortgage. Passage of such legislation to provide regulators with authority in this area is critically needed, and soon.

In addition to position limits, the proposal contains a mechanism to consider certain exemptions to those limits. I have suggested that any exemptions should be approved by the CFTC, targeted for legitimate business purposes, verifiable and transparent. This proposal meets all four of those criteria.

Traders hedging commercial risks, *i.e.* those who have inventory or have an interest in the underlying physical commodity, would qualify for a bona fide hedging exemption from the proposed speculative position limits upon application to the exchange. The CFTC would audit the use of this exemption to ensure its consistency with our rules and regulations. Importantly, no longer included in this class of traders would be swap dealers who establish positions to offset the financial risk of customer initiated swap positions. Instead, those traders could apply directly to the CFTC for a limited risk management exemption for positions held outside of the spot month. Swap dealers who receive this exemption from the CFTC would be subject to rigorous and regular reporting requirements to verify and qualify their need for the exemption. Currently, neither the names nor the numbers of such exemptions

are available to the public. Under the proposal, in order to increase transparency, the CFTC would make public the identities of those who receive exemptions.

Finally, the proposal seeks comment from the public on the question of expanding position limits to the metals complex and to soft agricultural commodities. While I am pleased that this question is at least posited through the proposed rule, I am extremely disappointed that metals are not a part of this proposal as I have sought. In essence, failure to include a proposed rule relative to metals such as gold and silver prevents the inclusion of metals in the final rule covering position limits in energy. As a result of the omission, CFTC attorneys have opined that should the Commission wish to establish position limits in metals as a result of public comment, the agency would have to undertake an entirely separate rulemaking. I strongly support thoughtful position limits in the metals complex. I have advocated for their inclusion in this proposal with each of my colleagues and staff, and regret the lack of consensus that remains. It is my sincere hope and expectation that the upcoming hearing on position limits with regard to metals will enable us to move more expeditiously on a parallel regulatory process for metals.

I thank everyone involved in conceiving and designing this thoughtful proposal with regard to energy. We seek comment, for an ample period of 90 days, on not only the overall proposal, but also specifically on the question of expanding the concept to the metals and soft agricultural commodities and on the question of imposing separate position limits for the massive passives as a class of investors. I look forward to the comments and ultimately to putting a sensible position limit system in place.

Concurring Statement of Commissioner Scott D. O'Malia

Regarding the Proposed Federal Speculative Position Limits for Referenced Energy Contracts and Associated Regulations

I concur on the release of the **Federal Register** notice of proposed Federal speculative position limits for certain energy commodities because I think it is important that the Commission receive comments on the proposal. I encourage our market participants, the public, and anyone with an interest in the markets to inform the Commission about the impact of the proposed limits or other limits, meaning limits as currently proposed, or potentially lower limits as a result of this rulemaking or future rulemaking.

Notwithstanding my concurrence on the release for comments, I have many concerns regarding the proposal's effectiveness and justification. Keeping in mind the importance of maintaining the market's fundamental purpose of allowing customers to hedge commercial risk, I question the utility of rules that either present any potential for circumventing CFTC authority or make energy markets less transparent or liquid.

The Proposed Limits Could Result in Less U.S. Regulatory Oversight

I question the effectiveness of these regulatory changes, especially as Congress is considering a much broader and comprehensive financial reform package. I remain particularly concerned with the impact of enacting the proposed position limits on the regulated exchanges, while the Commission lacks the regulatory authority to impose limits equitably upon all similar energy transactions, including over-the-counter transactions. As we work to increase transparency in these markets, the proposed position limits may undermine our efforts by allowing participants to turn to the less regulated and less transparent over-the-counter markets, which would be detrimental to the markets and to the public.

Status Quo for Index and Speculative Investors

Earlier this year, the Commission held hearings and heard testimony from witnesses who were frustrated with recent prices and volatility in commodity markets. Some advocated that the Commission immediately impose position limits as a solution. This created high expectations that any Commission proposal would impose limitations on passive index and speculative investors. The release states that no more than ten trading entities would be affected and most of those would likely be entitled to a *bona fide* hedge exemption. This means that few, if any, passive index and speculative investors will be significantly impacted by the proposed position limits. The proposed position limits will not change the investing behavior of passive index investors, so long as they remain under the limits or utilize the over-the-counter markets over which the Commission has limited authority. The Commission would benefit from receiving information on the impact, if any, the proposed position limits might have on the trading strategies of passive index investors going forward. In addition, the Commission should endeavor to improve its understanding of the impacts of passive index investors rolling over their position on a monthly basis to determine what, if any, action is required.

Concerns About Effectiveness and Necessity

This proposal makes a case for the statutory justification for the CFTC to impose position limits under Section 4a(a) of the Act. However, the proposal fails to make a compelling argument that the proposed position limits, which only target large concentrated positions, would dampen price distortions or curb excessive speculation. In large part, the lack of a compelling justification may be due to the CFTC's own research and the Interagency Task Force on Commodity Market's conclusion that the rise in oil prices was largely attributable to fundamental supply and demand factors, which is also supported by independent analysis. In addition, the fact that the proposed position limits are modeled on the agricultural commodities position limits forces us to examine whether those agriculture limits were effective in preventing the price spikes in 2007 and 2008. Despite federal position limits, contracts such as wheat, corn, soybeans, and cotton contracts were not spared record setting price increases.

Missed Opportunity for Transparency

The proposed position limits provide swap dealers with twice the single and all-months combined levels. This is a divergence from the current practice of providing swap dealers with a hedge exemption for commercial risk taken on over-the-counter transactions. I question whether the Commission has missed an opportunity to consider an alternative approach to provide swap dealers with a "look through" exemption, meaning swap dealers would receive a *bona fide* hedge exemption for business related to counterparties who would have been entitled to a hedge exemption if the counterparties had used the futures markets. In exchange for this "look through" exemption, swap dealers would provide the Commission with their customer's over-the-counter position data. That data would allow the Commission to determine whether customers are attempting to circumvent the position limits. I would be interested to receive comments on whether the Commission should impose this "look through" exemption, rather than the swap dealer exemption in the proposed rule. In addition, I am interested to know what types of data could be made available under a "look through" exemption. While I am aware that the proposed rule contains a provision for "look through" recordkeeping, meaning data would be provided only upon Commission request, this would not provide the same transparency as the above.

Position Limits Must Not Hinder Commercial Risk Management

If position limits are implemented, the Commission must ensure that such limits do not affect market liquidity and thus hinder the market's fundamental purpose of allowing commercial hedgers to manage risk. This is true for position limits on energy products or for any other commodity.

In light of the many questions and concerns I have, I look forward to receiving comments from market participants, the public, and anyone with an interest in the markets that would be impacted by the proposed position limits.

[FR Doc. 2010–1209 Filed 1–25–10; 8:45 am]

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Federal Register

Tuesday,
January 26, 2010

Part III

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2009–0596; FRL–9105–1]

RIN 2040–AF11

Water Quality Standards for the State of Florida's Lakes and Flowing Waters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing numeric nutrient water quality criteria to protect aquatic life in lakes and flowing waters, including canals, within the State of Florida and proposing regulations to establish a framework for Florida to develop "restoration standards" for impaired waters. On January 14, 2009, EPA made a determination under section 303(c)(4)(B) of the Clean Water Act ("CWA" or "the Act") that numeric nutrient water quality criteria for lakes and flowing waters and for estuaries and coastal waters are necessary for the State of Florida to meet the requirements of CWA section 303(c). Section 303(c)(4) of the CWA requires the Administrator to promptly prepare and publish proposed regulations setting forth new or revised water quality standards ("WQS" or "standards") when the Administrator, or an authorized delegate of the Administrator, determines that such new or revised WQS are necessary to meet requirements of the Act. This proposed rule fulfills EPA's obligation under section 303(c)(4) of the CWA to promptly propose criteria for Florida's lakes and flowing waters.

DATES: Comments must be received on or before March 29, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2009–0596, by one of the following methods:

1. *www.regulations.gov:* Follow the online instructions for submitting comments.

2. *E-mail: ow-docket@epa.gov.*

3. *Mail to:* Water Docket, U.S. Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention: Docket ID No. EPA–HQ–OW–2009–0596.

4. *Hand Delivery:* EPA Docket Center, EPA West Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention: Docket ID No. EPA–HQ–OW–2009–0596. 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–OW–2009–0596. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at a docket facility. The Office of Water (OW) Docket Center is open from 8:30 until 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket Center telephone number is (202) 566–2426, and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. 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.

Public hearings will be held in the following cities in Florida: Tallahassee, Orlando, and West Palm Beach. The public hearing in Tallahassee is scheduled for Tuesday, February 16, 2010 and will be held from 1 p.m. to 5 p.m. and 7 p.m. to 10 p.m. at the Holiday Inn Capitol East, 1355 Apalachee Parkway, Tallahassee, FL 32301. The public hearing in Orlando is scheduled for Wednesday, February 17, 2010 and will be held from 1 p.m. to 5 p.m. and 7 p.m. to 10 p.m. at the Crowne Plaza Orlando Universal, 7800 Universal Boulevard, Orlando, FL 32819. The public hearing in West Palm Beach is scheduled for Thursday, February 18, 2010 and will be held from 1 p.m. to 5 p.m. and 7 p.m. to 10 p.m. at the Holiday Inn Palm Beach Airport, 1301 Belvedere Road, West Palm Beach, FL 33405. If you need a sign language interpreter at any of these hearings, you should contact Sharon Frey at 202–566–1480 or *frey.sharon@epa.gov* at least ten business days prior to the meetings so that appropriate arrangements can be made. For further information, including registration information, please refer to the following Web site: *http://www.epa.gov/waterscience/standards/rules/florida/.*

FOR FURTHER INFORMATION CONTACT: Danielle Salvaterra, U.S. EPA Headquarters, Office of Water, Mailcode: 4305T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: 202–564–1649; fax number: 202–566–9981; e-mail address: *salvaterra.danielle@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

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I. General Information

A. Executive Summary

Excess loadings of nitrogen and phosphorus, commonly referred to as nutrient pollution, are one of the most prevalent causes of water quality impairment in the United States. Anthropogenic nitrogen and phosphorus over-enrichment in many of the Nation's waters is a widespread, persistent, and growing problem. Nutrient pollution can significantly impact aquatic life and long-term ecosystem health, diversity, and balance. More specifically, high nitrogen and phosphorus loadings, or nutrient pollution, result in harmful algal blooms (HABs), reduced spawning grounds and nursery habitats, fish kills, and oxygen-starved hypoxic or "dead" zones. Public health concerns related to nutrient pollution include impaired drinking water sources, increased exposure to toxic microbes such as cyanobacteria, and possible formation of disinfection byproducts in drinking water, some of which have been associated with serious human illnesses such as bladder cancer. Nutrient problems can exhibit themselves locally or much further downstream leading to degraded lakes, reservoirs, and estuaries, and to hypoxic zones where fish and aquatic life can no longer survive.

In the State of Florida, nutrient pollution has contributed to severe water quality degradation. Based upon waters assessed and reported in the *2008 Integrated Water Quality Assessment for Florida,* approximately 1,000 miles of rivers and streams, 350,000 acres of lakes, and 900 square miles of estuaries are known to be impaired for nutrients by the State.[1] The actual number of stream miles, lake acres, and estuarine square miles of waters impaired for nutrients in Florida may be higher, as many waters currently are classified as "unassessed."

The challenge of nutrient pollution has been a top priority for Florida's Department of Environmental Protection (FDEP). Over the past decade or more, FDEP has spent over 20 million dollars collecting and analyzing data on the relationship between phosphorus, nitrogen, and nitrite-nitrate concentrations and the biological health of aquatic systems. Moreover, Florida is one of the few states that has in place a comprehensive framework of accountability that applies to both point and nonpoint sources and provides the enforceable authority to address nutrient reductions in impaired waters based upon the establishment of site-specific total maximum daily loads (TMDLs).

Despite FDEP's intensive efforts to diagnose and control nutrient pollution, substantial water quality degradation from nutrient over-enrichment remains a significant problem. On January 14, 2009, EPA determined under CWA section 303(c)(4)(B) that new or revised WQS in the form of numeric nutrient water quality criteria are necessary to meet the requirements of the CWA in the State of Florida. The Agency considered (1) the State's documented unique and threatened ecosystems, (2) the high number of impaired waters due to existing nutrient pollution, and (3) the challenge associated with growing nutrient pollution resulting from expanding urbanization, continued agricultural development, and a significantly increasing population that is expected to grow 75% between 2000 to 2030.[2] EPA also reviewed the State's regulatory nutrient accountability system, which represents an impressive synthesis of technology-based standards, point source control authority, and authority to establish enforceable controls for nonpoint source activities. However, the significant challenge faced by the water quality components of this system is its dependence upon an approach involving resource-intensive and time-consuming site-specific data collection and analysis to interpret non-numeric narrative nutrient criteria. EPA determined that Florida's reliance on a case-by-case interpretation of its narrative nutrient criterion in implementing an otherwise comprehensive water quality framework of enforceable accountability was insufficient to ensure protection of applicable designated uses. As part of the Agency's determination, EPA indicated that it expected to propose numeric nutrient criteria for lakes and flowing waters within 12 months, and for estuarine and coastal waters within 24 months, of the January 14, 2009 determination.

On August 19, 2009, EPA entered into a phased Consent Decree with Florida Wildlife Federation, Sierra Club, Conservancy of Southwest Florida, Environmental Confederation of Southwest Florida, and St. Johns Riverkeeper, committing to sign a proposed rule setting forth numeric nutrient criteria for lakes and flowing waters in Florida by January 14, 2010, and for Florida's estuarine and coastal waters by January 14, 2011, unless Florida submits and EPA approves State numeric nutrient criteria before EPA's proposal. The phased Consent Decree also provides that EPA issue a final rule by October 15, 2010 for lakes and flowing water, and by October 15, 2011 for estuarine and coastal waters, unless Florida submits and EPA approves State numeric nutrient criteria before a final EPA action.

Accordingly, this proposal is part of a phased rulemaking process in which EPA will propose and take final action in 2010 on numeric nutrient criteria for lakes and flowing waters and for estuarine and coastal waters in 2011. The two phases of this rulemaking are linked because nutrient pollution in Florida's rivers and streams affects not only instream aquatic conditions but also downstream estuarine and coastal waters ecosystem conditions. The Agency could have waited to propose estuarine and coastal downstream protection criteria values for rivers and streams as part of the second phase of this rulemaking process. However, the substantial data, peer-reviewed methodologies, and extensive scientific

[1] Florida Department of Environmental Protection. 2008. Integrated Water Quality Assessment for Florida: 2008 305(b) Report and 303(d) List Update, p. 67.

[2] *http://www.census.gov/population/projections/SummaryTabA1.pdf.*

analyses available to and conducted by the Agency to date indicate that numeric nutrient water quality criteria for estuarine and coastal waters, when proposed and finalized in 2011, may result in the need for more stringent rivers and streams criteria to ensure protection of downstream water quality, particularly for the nitrogen component of nutrient pollution. Therefore, considering the numerous requests for the Agency to share its analysis and scientific and technical conclusions at the earliest possible opportunity to allow for full review and comment, EPA is including downstream protection values for total nitrogen (TN) as proposed criteria for rivers and streams to protect the State's estuaries and coastal waters in this notice.

As described in more detail below and in the technical support document accompanying this notice, these proposed nitrogen downstream protection values are based on substantial data, thorough scientific analysis, and extensive technical evaluation. However, EPA recognizes that additional data and analysis may be available, including data for particular estuaries, to help inform what numeric nutrient criteria are necessary to protect Florida's waters, including downstream lakes and estuaries. EPA also recognizes that substantial site-specific work has been completed for a number of these estuaries. This notice and the proposed downstream protection values are not intended to address or be interpreted as calling into question the utility and protectiveness of these site-specific analyses. Rather, the proposed values represent the output of a systematic and scientific approach that was developed to be generally applicable to all flowing waters in Florida that terminate in estuaries for the purpose of ensuring the protection of downstream estuaries. EPA is interested in obtaining feedback at this time on this systematic and scientific approach. EPA is also interested in feedback regarding site-specific analyses for particular estuaries that should be used instead of this general approach for establishing final values. The Agency further recognizes that the proposed values in this notice will need to be considered in the context of the Agency's numeric nutrient criteria for estuarine and coastal waters scheduled for proposal in January of 2011.

Regarding the criteria for flowing waters for protection of downstream lakes and estuaries, at this time, EPA intends to take final action on the criteria for protection of downstream lakes as part of the first phase of this rulemaking (by October 15, 2010) and to finalize downstream protection values in flowing waters as part of the second phase of this rulemaking process (by October 15, 2011) in coordination with the proposal and finalization of numeric nutrient criteria for estuarine and coastal waters in 2011. However, if comments, data and analyses submitted as a result of this proposal support finalizing these values sooner, by October 2010, EPA may choose to proceed in this manner. To facilitate this process, EPA requests comments and welcomes thorough evaluation on the technical and scientific basis of these proposed downstream protection values, as well as information on estuaries where site-specific analyses should be used, as part of the broader comment and evaluation process that this proposal initiates.

In accordance with the terms of EPA's January 14, 2009 determination and the Consent Decree, EPA is proposing numeric nutrient criteria for Florida's lakes and flowing waters which include the following four water body types: Lakes, streams, springs and clear streams, and canals in south Florida. In developing this proposal, EPA worked closely with FDEP staff to review and analyze the State's extensive dataset of nutrient-related measurements as well as its analysis of stressor-response relationships and benchmark or modified-reference conditions. EPA also conducted further analyses and modeling, in addition to requesting an independent external peer review of the core methodologies and approaches that support this proposal.

For lakes, EPA is proposing a classification scheme using color and alkalinity based upon substantial data that show that lake color and alkalinity play an important role in the degree to which TN and total phosphorus (TP) concentrations result in a biological response such as elevated chlorophyll *a* levels. EPA found that correlations between nutrients and biological response parameters in the different types of lakes in Florida were sufficiently robust, combined with additional lines of evidence, to support stressor-response criteria development for Florida's lakes. The Agency is also proposing an accompanying supplementary analytical approach that the State can use to adjust TN and TP criteria for a particular lake within a certain range where sufficient data on long-term ambient TN and TP levels are available to demonstrate that protective chlorophyll *a* criteria for a specific lake will still be maintained and attainment of the designated use will be assured. This information is presented in more detail in Section III.B below.

Regarding numeric nutrient criteria for streams and rivers, EPA considered the extensive work of FDEP to analyze the relationship between TN and TP levels and biological response in streams and rivers. EPA found that relationships between nutrients and biological response parameters in rivers and streams were affected by many factors that made derivation of a quantitative relationship between chlorophyll *a* levels and nutrients in streams and rivers difficult to establish in the same manner as EPA did for lakes (*i.e.,* stressor-response relationship). EPA considered an alternative methodology that evaluated a combination of biological information and data on the distribution of nutrients in a substantial number of healthy stream systems. Based upon a technical evaluation of the significant available data on Florida streams and related scientific analysis, the Agency concluded that reliance on a statistical distribution methodology was a stronger and a more sound approach for deriving TN and TP criteria in streams and rivers. This information is presented in more detail in Section III.C below.

In developing these proposed numeric nutrient criteria for rivers and streams, EPA also evaluated their effectiveness for assuring the protection of downstream lake and estuary designated uses pursuant to the provisions of 40 CFR 130.10(b), which requires that WQS must provide for the attainment and maintenance of the WQS of downstream waters. For rivers and streams in Florida, EPA must ensure, to the extent that available science allows, that its nutrient criteria take into account the impact of near-field nutrient loads on aquatic life in downstream lakes and estuaries. EPA currently has evaluated the protectiveness of its rivers and streams TP criteria for lake protection and also the protectiveness of its rivers and streams TN criteria for 16 out of 26 of Florida's downstream estuaries using scientifically sound approaches for both estimating protective loads and deriving concentration-based upstream values. Of the ten downstream estuaries not completely evaluated to date, seven are in south Florida and receive TN loads from highly managed canals and waterways and three are in low lying areas of central Florida.

As noted above, EPA used best available science and data related to downstream waters and found that there are cases where the nutrient criteria EPA is proposing to protect instream aquatic life may not be stringent enough to ensure protection of aquatic life in certain downstream lakes and estuaries. Accordingly, EPA is also proposing an

equation that would be used to adjust stream and river TP criteria to protect downstream lakes and a different methodology to adjust TN criteria for streams and rivers to ensure protection of downstream estuaries. These approaches as reflected in these proposed regulations and the revised criteria that would result from adjusting TN criteria for streams and rivers to ensure protection of downstream estuaries, based on certain assumptions, are detailed in Section III.C(6)(b) below. The Agency specifically requests comment on the available information, analysis, and modeling used to support the approaches EPA is proposing for addressing downstream impacts of TN and TP. EPA also invites additional stakeholder comment, data, and analysis on alternative technically-based approaches that would support the development of numeric nutrient WQS, or some other scientifically defensible approach, for protection of downstream waters. To the degree that substantial data and analyses are submitted that support a significant revision to downstream protection values for TN outlined in Section III.C(6)(b) below, EPA would intend to issue a supplemental **Federal Register** Notice of Data Availability (NODA) to present the additional data and supplemental analyses and solicit further comment and input. EPA anticipates obtaining the necessary data and information to compute downstream protection values for TP loads for many estuarine water bodies in Florida in 2010 and will also make this additional information available by issuing a supplemental **Federal Register** NODA.

Regarding numeric nutrient criteria for springs and clear streams, EPA is proposing a nitrate-nitrite criterion for springs and clear streams based on experimental laboratory data and field evaluations that document the response of nuisance algae and periphyton to nitrate-nitrite concentrations. This criterion is explained in more detail in Section III.D below.

For canals in south Florida, EPA is proposing a statistical distribution approach similar to its approach for rivers and streams, and based on sites meeting designated uses with respect to nutrients identified in four canal regions to best represent the necessary criteria to protect these highly managed water bodies. This approach is presented in more detail in Section III.E below. The Agency has also considered several alternative approaches to developing numeric nutrient criteria for canals and these are described, as well, for public comment and response.

Stakeholders have expressed concerns that numeric nutrient criteria must be scientifically sound. Under the Clean Water Act and EPA's implementing regulations, numeric nutrient standards must protect the designated use of a water (as well as ensure protection of downstream uses) and must be based on sound scientific rationale. In the case of Florida, EPA and FDEP scientists completed a substantial body of scientific work; EPA believes that these proposed criteria clearly meet the regulatory standards of protection and that they are clearly based on a sound scientific rationale.

Separate from and in addition to proposing numeric nutrient criteria, EPA is also proposing a new WQS regulatory tool for Florida, referred to as "restoration WQS" for impaired waters. This tool will enable Florida to set incremental water quality targets (uses and criteria) for specific pollutant parameters while at the same time retaining protective criteria for all other parameters to meet the full aquatic life use. The goal is to provide a challenging but realistic incremental framework in which to establish appropriate control measures. This provision will allow Florida to retain full aquatic life protection (uses and criteria) for its water bodies while establishing a transparent phased WQS process that would result in planned implementation of enforceable measures and requirements to improve water quality over a specified time period to ultimately meet the long-term designated aquatic life use. The phased numeric standards would be included in Florida's water quality regulations during the restoration period. This proposed regulatory tool is discussed in more detail in Section VI below.

Finally, EPA is including in this notice a proposed approach for deriving Federal site-specific alternative criteria (SSAC) based upon State submissions of scientifically defensible recalculations that meet the requirements of CWA section 303(c). TMDL targets submitted to EPA by the State for consideration as new or revised WQS could be reviewed under this SSAC process. This proposed approach is discussed in more detail in Section V.C below.

Overall, EPA is soliciting comments and data regarding EPA's proposed criteria for lakes and flowing waters, the derivation of these criteria, the protectiveness of the streams and rivers criteria for downstream waters, and all associated alternative options and methodologies discussed in this proposed rulemaking.

B. What Entities May Be Affected by This Rule?

Citizens concerned with water quality in Florida may be interested in this rulemaking. Entities discharging nitrogen or phosphorus to lakes and flowing waters of Florida could be indirectly affected by this rulemaking because WQS are used in determining National Pollutant Discharge Elimination System ("NPDES") permit limits. Stakeholders in Florida facing obstacles in immediately achieving full aquatic life protection in impaired waters may be interested in the restoration standards concept outlined in this rulemaking. Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to lakes and flowing waters in the State of Florida.
Municipalities	Publicly-owned treatment works discharging pollutants to lakes and flowing waters in the State of Florida.
Stormwater Management Districts.	Entities responsible for managing stormwater runoff in Florida.

This table is not intended to be exhaustive, but rather provides a guide for entities that may be directly or indirectly affected by this action. This table lists the types of entities of which EPA is now aware that potentially could be affected by this action. Other types of entities not listed in the table could also be affected, such as nonpoint source contributors to nutrient pollution in Florida's waters. Any parties or entities conducting activities within watersheds of the Florida waters covered by this rule, or who rely on, depend upon, influence, or contribute to the water quality of the lakes and flowing waters of Florida, might be affected by this rule. To determine whether your facility or activities may be affected by this action, you should examine this proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that

you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

2. 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.

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

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

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

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

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

D. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket Id. No. EPA–HQ–OW–2009–0596. The official public docket consists of the document specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1744. A reasonable fee will be charged for copies.

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II. Background

A. Nutrient Pollution

1. What Is Nutrient Pollution?

Excess anthropogenic concentrations of nitrogen (typically in oxidized, inorganic forms, such as nitrate) [3] and phosphorus (typically as phosphate), commonly referred to as nutrient pollution, in surface waters can result in excessive algal and aquatic plant growth, referred to as eutrophication.[4] One impact associated with eutrophication is low dissolved oxygen, due to decomposition of the aquatic plants and algae when these plants and algae die. As noted above, high nitrogen and phosphorus loadings also result in HABs, reduced spawning grounds and nursery habitats for aquatic life, and fish kills. Public health concerns related to eutrophication include impaired drinking water sources, increased exposure to toxic microbes such as cyanobacteria, and possible formation of disinfection byproducts in drinking water, some of which have been associated with serious human illnesses such as bladder cancer.[5] [6] Nutrient problems can manifest locally or much further downstream in lakes, reservoirs, and estuaries.

Excess nutrients in water bodies come from many sources, which can be grouped into five major categories: (1) Sources associated with urban land use and development, (2) municipal and industrial waste water discharge, (3) row crop agriculture, (4) animal husbandry, and (5) atmospheric deposition that may be increased by production of nitrogen oxides in electric power generation and internal combustion engines. These sources contribute significant loadings of nitrogen and phosphorus to surface waters causing major impacts to aquatic ecosystems and significant imbalances in the natural populations of flora and fauna.[7]

2. Adverse Impacts of Nutrient Pollution on Aquatic Life, Human Health, and the Economy

To protect aquatic life, EPA regulates pollutants that have adverse effects on aquatic life. For most pollutants, these effects are typically negative impacts on growth, reproduction, and survival. As previously noted, excess nutrients can lead to increases in algal and other aquatic plant growth, including toxic algae that can result in HABs. Increases in algal and aquatic plant growth provide excess organic matter in a water body and can contribute to subsequent degradation of aquatic communities, human health impacts, and ultimately economic impacts.

Fish, shellfish, and wildlife require clean water for survival. Changes in the environment resulting from elevated nutrient levels (such as algal blooms, toxins from HABs, and hypoxia/anoxia) can cause a variety of effects. When excessive nutrient loads change a water body's algae and plant species, the change in habitat and available food resources can induce changes affecting an entire food chain. Algal blooms block

[3] To be used by living organisms, nitrogen gas must be fixed into its reactive forms; for plants, either nitrate or ammonia.

[4] Eutrophication is defined as an increase in organic carbon to an aquatic ecosystem caused by primary productivity stimulated by excess nutrients—typically compounds containing nitrogen or phosphorus. Eutrophication can adversely affect aquatic life, recreation, and human health uses of waters.

[5] Villanueva, C.M. *et al.,* 2006. Bladder Cancer and Exposure to Water Disinfection By-Products through Ingestion, Bathing, Showering, and Swimming in Pools. *American Journal of Epidemiology,* 165(2):148–156.

[6] U.S. EPA. 2009. What Is in Our Drinking Water. United States Environmental Protection Agency, Office of Research and Development. *http://www.epa.gov/extrmurl/research/process/drinkingwater.html.* Accessed December 2009.

[7] National Research Council, 2000. Clean Coastal Waters: Understanding and Reducing the Effects of Nutrient Pollution. Report prepared by the Ocean Study Board and Water Science and Technology Board, Commission on Geosciences, Environment and Resources, National Resource Council. National Academy Press, Washington, DC; Howarth, R.W., A. Sharpley, and D. Walker. 2002. Sources of nutrient pollution to coastal waters in the United States: Implications for achieving coastal water quality goals. *Estuaries.* 25(4b):656–676; Smith, V.H. 2003. Eutrophication of freshwater and coastal marine ecosystems. *Environ. Sci. and Poll. Res.* 10(2):126–139; Dodds, W.K., W.W. Bouska, J.L. Eitzmann, T.J. Pilger, K.L. Pitts, A.J. Riley, J.T. Schloesser, and D.J. Thornbrugh. 2009. Eutrophication of U.S. freshwaters: Analysis of potential economic damages. *Environ. Sci. Tech.*. 43(1):12–19.

sunlight that submerged grasses need to grow, leading to a decline of seagrass beds and decreased habitat for juvenile organisms. Algal blooms can also increase turbidity and impair the ability of fish and other aquatic life to find food.[8] Algae can also damage or clog the gills of fish and invertebrates.[9]

HABs can form toxins that cause illness or death for some animals. Some of the more commonly affected animals include sea lions, turtles, seabirds, dolphins, and manatees.[10] More than 50% of unusual marine mortality events may be associated with HABs.[11] Lower level consumers, such as small fish or shellfish, may not be harmed by algal toxins, but they bioaccumulate toxins, causing higher exposures for higher level consumers (such as larger predator fish), resulting in health impairments and possibly death.[12] [13]

There are many examples of HAB toxins significantly affecting marine animals. For example, between March and April 2003, 107 bottlenose dolphins *(Tursiops truncatus)* died, along with hundreds of fish and marine invertebrates, along the Florida Panhandle.[14] High levels of brevetoxin (a neurotoxin), produced by a harmful species of dinoflagellate (a type of algae), were measured in all of the stranded dolphins examined, as well as in their fish prey.[15]

In freshwater, cyanobacteria can produce toxins that have been implicated as the cause of a large number of fish and bird mortalities. These toxins have also been tied to the death of pets and livestock that may be exposed through drinking contaminated water or grooming themselves after bodily exposure.[16] A recent study showed that at least one type of cyanobacteria has been linked to cancer and tumor growth in animals.[17]

Excessive algal growth contributes to increased oxygen consumption associated with decomposition, potentially reducing oxygen to levels below that needed for aquatic life to survive and flourish.[18] [19] Low oxygen, or hypoxia, often occurs in episodic "events," which sometimes develop overnight. Mobile species, such as adult fish, can sometimes survive by moving to areas with more oxygen. However, migration to avoid hypoxia depends on species mobility, availability of suitable habitat, and adequate environmental cues for migration. Less mobile or immobile species, such as oysters and mussels, cannot move to avoid low oxygen and are often killed during hypoxic events.[20] While certain mature aquatic animals can tolerate a range of dissolved oxygen levels that occur in the water, younger life stages of species like fish and shellfish often require higher levels of oxygen to survive.[21] Sustained low levels of dissolved oxygen cause a severe decrease in the amount of aquatic life in hypoxic zones and affect the ability of aquatic organisms to find necessary food and habitat. In extreme cases, anoxic conditions occur when there is a complete lack of oxygen. Very few organisms can live without oxygen (for example some microbes), hence these areas are sometimes referred to as dead zones.[22]

Primary impacts to humans result directly from elevated nutrient pollution levels and indirectly from the subsequent water body changes that occur from increased nutrients (such as algal blooms and toxins). Direct impacts include effects on human health through drinking water or consuming toxic shellfish. Indirect impacts include restrictions on recreation (such as boating, swimming, and kayaking). Algal blooms can prevent opportunities to swim and engage in other types of recreation. In areas where recreation is determined to be unsafe because of algal blooms, warning signs are often posted to discourage human use of the waters.

Highly elevated nitrogen levels, in the form of nitrate, in drinking water supplies and private wells can cause methemoglobinemia (blue baby syndrome, which refers to high levels of nitrate in a baby's blood that reduce the blood's ability to deliver oxygen to the skin and organs resulting in a bluish tinge to the skin; in severe cases methemoglobinemia can lead to coma and death).[23] Monitoring of Florida Public Water Supplies from 2004–2007 indicates that violations of nitrate maximum contaminant levels (MCL) ranged from 34–40 violations annually.[24] In addition, in the predominantly agricultural regions of Florida, of 3,949 drinking water wells analyzed for nitrate by the Florida Department of Agriculture and Consumer Services, (FDACS) and the FDEP, 2,483 (63%) contained detectable nitrate and 584 wells (15%) contained nitrate above the U.S. EPA MCL. Of the 584 wells statewide that exceeded the MCL, 519 were located in the Central Florida Ridge citrus growing region, encompassed primarily by Lake, Polk and Highland Counties.[25] Human health can also be impacted by disinfection byproducts formed when disinfectants (such as chlorine) used to treat drinking water react with organic carbon (from the algae in source waters). Some disinfection byproducts have been linked to rectal, bladder, and colon cancers; reproductive health risks; and liver, kidney, and central nervous

[8] Hauxwell, J. C. Jacoby, T. Frazer, and J. Stevely. 2001. Nutrients and Florida's Coastal Waters. Florida Sea Grant.

[9] NOAA. 2009. Harmful Algal Blooms: Current Programs Overview. National Oceanic and Atmospheric Administration. *http://www.cop.noaa.gov/stressors/extremeevents/hab/welcome.html.* Accessed December 2009.

[10] NOAA. 2009. Harmful Algal Blooms: Current Programs Overview. National Oceanic and Atmospheric Administration. *http://www.cop.noaa.gov/stressors/extremeevents/hab/welcome.html.* Accessed December 2009.

[11] WHOI. 2008. HAB Impacts on Wildlife. Woods Hole Oceanographic Institution. *http://www.whoi.edu/redtide/page.do?pid=9682.* Accessed December 2009.

[12] WHOI. 2008. Marine Mammals. Woods Hole Oceanographic Institution. *http://www.whoi.edu/redtide/page.do?pid=14215.* Accessed December 2009.

[13] WHOI. 2008. HAB Impacts on Wildlife. Woods Hole Oceanographic Institution. *http://www.whoi.edu/redtide/page.do?pid=9682.* Accessed December 2009.

[14] WHOI. 2008. Marine Mammals. Woods Hole Oceanographic Institution. *http://www.whoi.edu/redtide/page.do?pid=14215.* Accessed December 2009.

[15] WHOI. 2008. Marine Mammals. Woods Hole Oceanographic Institution. *http://www.whoi.edu/redtide/page.do?pid=14215.* Accessed December 2009.

[16] WHOI. 2008. HAB Impacts on Wildlife. Woods Hole Oceanographic Institution. *http://www.whoi.edu/redtide/page.do?pid=9682.* Accessed December 2009.

[17] Falconer, I.R., A.R. Humpage. 2005. Health Risk Assessment of Cyanobacterial (Blue-green Algal) Toxins in Drinking Water. *Int. J. Environ. Res. Public Health.* 2(1): 43–50.

[18] NOAA. 2009. Harmful Algal Blooms: Current Programs Overview. National Oceanic and Atmospheric Administration. *http://www.cop.noaa.gov/stressors/extremeevents/hab/welcome.html.* Accessed December 2009.

[19] USGS. 2009. Hypoxia. U.S. Geological Survey. *http://toxics.usgs.gov/definitions/hypoxia.html.* Accessed December 2009.

[20] ESA. 2009. Hypoxia. Ecological Society of America. *http://www.esa.org/education_diversity/pdfDocs/hypoxia.pdf.* Accessed December 2009.

[21] USEPA. 2000. Ambient Aquatic Life Water Quality Criteria for Dissolved Oxygen (Saltwater): Cape Cod to Cape Hattaras. Environmental Protection Agency, Office of Water, Washington DC PA–822–R–00–012.

[22] Ecological Society of America. 2009. Hypoxia. Ecological Society of America, Washington, DC. *http://www.esa.org/education/edupdfs/hypoxia.pdf.* Accessed December 2009.

[23] USEPA. 2007. Nitrates and Nitrites. U.S. Environmental Protection Agency. *http://www.epa.gov/teach/chem_summ/Nitrates_summary.pdf.* Accessed December 2009.

[24] FDEP 2009. *Chemical Data for 2004, 2005, 2006, 2007 and 2008.* Florida Department of Environmental Protection. *http://www.dep.state.fl.us/water/drinkingwater/chemdata.htm.* Accessed January 2010.

[25] Southern Regional Water Program. 2010. Drinking Water and Human Health in Florida. Southern Regional Water Program, *http://srwqis.tamu.edu/florida/program-information/florida-target-themes/drinking-water-and-human-health.aspx.* Accessed January 2010.

system problems.[26] [27] Humans can also be impacted by accidentally ingesting toxins, resulting from toxic algal blooms in water, while recreating or by consuming drinking water that still contains toxins despite treatment. For example, cyanobacteria toxins can sometimes pass through the normal water treatment process.[28] After consuming seafood tainted by toxic HABs, humans can develop gastrointestinal distress, memory loss, disorientation, confusion, and even coma and death in extreme cases. Some toxins only require a small dose to cause illness or death.[29] EPA expects that by addressing protection of aquatic life uses through the application of the proposed numeric nutrient criteria in this rulemaking, risks to human health will also be alleviated, as nutrient levels that represent a balance of natural populations of flora and fauna will not produce HABs nor result in highly elevated nitrate levels.

Nutrient pollution and eutrophication can also impact the economy through additional reactive costs, such as medical treatment for humans who ingest HAB toxins, treating drinking water supplies to remove algae and organic matter, and monitoring water for shellfish and other affected resources.

Economic losses from algal blooms and HABs can include reduced property values for lakefront areas, commercial fishery losses, and lost revenue from recreational fishing and boating trips, as well as other tourism-related businesses. Commercial fishery losses occur because of a decline in the amount of fish available for harvest due to habitat and oxygen declines. Some HAB toxins can make seafood unsafe for human consumption, and can reduce the amount of fish bought because people might question if eating fish is safe after learning of the presence of the algal bloom.[30] To put the issue into perspective, consider the following estimates: For freshwater lakes, losses in fishing and boating trip-related revenues nationwide due to eutrophication are estimated to range from $370 million to almost $1.2 billion dollars and loss of lake property values from excessive algal growth are estimated to range from $300 million to $2.8 billion annually on a national level.[31]

3. Nutrient Pollution in Florida

Water quality degradation resulting from excess nitrogen and phosphorus loadings is a documented and significant environmental issue in Florida. According to Florida's 2008 Integrated Report,[32] approximately 1,000 miles of rivers and streams, 350,000 acres of lakes, and 900 square miles of estuaries are impaired for nutrients in the State. To put this in context, these values represent approximately 5% of the assessed river and stream miles, 23% of the assessed lake acres, and 24% of the assessed square miles of estuaries that Florida has listed as impaired in the 2008 Integrated Report.[33] Nutrients are ranked as the fourth major source of impairment for rivers and streams in the State (after dissolved oxygen, mercury in fish, and fecal coliforms). For lakes and estuaries, nutrients are ranked first and second, respectively. As discussed above, impairments due to nutrient pollution result in significant impacts to aquatic life and ecosystem health. Nutrient pollution also represents, as mentioned above, an increased human health risk in terms of contaminated drinking water supplies and private wells.

Florida is particularly vulnerable to nutrient pollution. Historically, the State has experienced a rapidly expanding population, which is a strong predictor of nutrient loading and associated effects, and which combined with climate and other natural factors, make Florida waters sensitive to nutrient effects. Florida is currently the fourth most populous state in the nation, with an estimated 18 million people.[34] Population is expected to continue to grow, resulting in an expected increase in urban development, home landscapes, and wastewater. Florida's flat topography causes water to move slowly over the landscape, allowing ample opportunity for eutrophication responses to develop. Similarly, small tides in many of Florida's estuaries (especially on the Gulf coast) also allow for well-developed eutrophication responses in tidal waters. Florida's warm and wet, yet sunny, climate further contributes to increased run-off and subsequent eutrophication responses.[35] Exchanges of surface water and ground water contribute to complex relationships between nutrient sources and the location and timing of eventual impacts.[36]

In addition, extensive agricultural development and associated hydrologic modifications (*e.g.,* canals and ditches) amplify the State's susceptibility to nutrient pollution. Many of Florida's inland areas have extensive tracts of agricultural lands. Much of the intensive agriculture and associated fertilizer usage takes place in locations dominated by poorly drained sandy soils and with high annual rainfall amounts, two conditions favoring nutrient-rich runoff. These factors, along with population increase, have contributed to a significant upward trend in nutrient inputs to Florida's waters.[37] High historical water quality and the human and aquatic life uses of many waterways in Florida often means that very low nutrients, low productivity, and high water clarity are needed and expected to maintain uses.

B. Statutory and Regulatory Background

Section 303(c) (33 U.S.C. 1313(c)) of the CWA directs states to adopt WQS for their navigable waters. Section 303(c)(2)(A) and EPA's implementing regulations at 40 CFR part 131 require, among other provisions, that state WQS include the designated use or uses to be made of the waters and criteria that protect those uses. EPA regulations at 40 CFR 131.11(a)(1) provide that states shall "adopt those water quality criteria

[26] USEPA. 2009. Drinking Water Contaminants. U.S. Environmental Protection Agency. Accessed *http://www.epa.gov/safewater/hfacts.html.* December 2009.

[27] CFR. 2006. *40 CFR parts 9, 141, and 142:* National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule. Code of Federal Regulations, Washington, DC. *http://www.epa.gov/fedrgstr/EPA-WATER/2006/January/Day-04/w03.htm.* Accessed December 2009.

[28] Carmichael, W.W. 2000. Assessment of Blue-Green Algal Toxins in Raw and Finished Drinking Water. AWWA Research Foundation, Denver, CO.

[29] NOAA. 2009. Marine Biotoxins. National Oceanic and Atmospheric Administration. *http://www.nwfsc.noaa.gov/hab/habs_toxins/marine_biotoxins/index.html.* Accessed December 2009.

[30] WHOI. 2008. Hearing on 'Harmful Algal Blooms: The Challenges on the Nation's Coastlines.' Woods Hole Oceanographic Institution. *http://www.whoi.edu/page.do?pid=8916&tid=282&cid=46007.* Accessed December 2009.

[31] Dodds, W.K., W.W. Bouska, J.L. Eitzmann, T.J. Pilger, K.L. Pitts, A.J. Riley, J.T. Schloesser, and D.J. Thornbrugh. 2009. Eutrophication of U.S. freshwaters: analysis of potential economic damages. *Environ.l Sci. Tech.y.* 43(1):12–19.

[32] Florida Department of Environmental Protection. 2008. Integrated Water Quality Assessment for Florida: 2008 305(b) Report and 303(d) List Update.

[33] Florida Department of Environmental Protection. 2008. Integrated Water Quality Assessment for Florida: 2008 305(b) Report and 303(d) List Update.

[34] U.S. Census Bureau. 2009. 2008 Population Estimates Ranked by State. *http://factfinder.census.gov.*

[35] Perry, W.B. 2008. Everglades restoration and water quality challenges in south Florida. *Ecotoxicology* 17:569–578.

[36] USGS. 2009. Florida Waters: A Water Resources Manual. *http://sofia.usgs.gov/publications/reports/floridawaters/.* Accessed June 9, 2009.

[37] Florida Department of Environmental Protection. 2008. Integrated Water Quality Assessment for Florida: 2008 305(b) Report and 303(d) List Update.

that protect the designated use" and that such criteria "must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use." As noted above, 40 CFR 130.10(b) provides that "In designating uses of a water body and the appropriate criteria for those uses, the state shall take into consideration the water quality standards of downstream waters and ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters."

States are also required to review their WQS at least once every three years and, if appropriate, revise or adopt new standards (CWA section 303(c)(1)). States are required to submit these new or revised WQS for EPA review and approval or disapproval (CWA section 303(c)(2)(A)). Finally, CWA section 303(c)(4)(B) authorizes the Administrator to determine, even in the absence of a state submission, that a new or revised standard is needed to meet CWA requirements. The criteria proposed in this rulemaking apply to lakes and flowing waters of the State of Florida. EPA's proposal defines "lakes and flowing waters" to mean inland surface waters that have been classified by Florida as Class I (Potable Water Supplies Use) or Class III (Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife Use) water bodies pursuant to Florida Administrative Code (F.A.C.) Rule 62–302.400, excluding wetlands, and which are predominantly fresh waters.

C. Water Quality Criteria

EPA has issued guidance for use by states when developing criteria. Under CWA section 304(a), EPA periodically publishes criteria recommendations (guidance) for use by states in setting water quality criteria for particular parameters to protect recreational and aquatic life uses of waters. When EPA has published recommended criteria, states have the option of adopting water quality criteria based on EPA's CWA section 304(a) criteria guidance, section 304(a) criteria guidance modified to reflect site-specific conditions, or other scientifically defensible methods. 40 CFR 131.11(b)(1).

For nutrients, EPA has published under CWA section 304(a) a series of peer-reviewed, national technical approaches and methods regarding the development of numeric nutrient criteria for lakes and reservoirs,[38] rivers and streams,[39] and estuaries and coastal marine waters.[40] Basic analytical approaches for nutrient criteria derivation include, but are not limited to: (1) Stressor-response analysis, (2) the reference condition approach, and (3) mechanistic modeling. The stressor-response, or effects-based, approach relates a water body's response to nutrients and identifies adverse effect levels. This is done by selecting a protective value based on the relationships of nitrogen and phosphorus field measures with indicators of biological response. This approach is empirical, and directly relates to the designated uses. The reference condition approach derives candidate criteria from distributions of nutrient concentrations and biological responses in a group of waters. Measurements are made of causal and response variables and a protective value is selected from the distribution. The mechanistic modeling approach predicts a cause-effect relationship using site-specific input to equations that represent ecological processes. Mechanistic models require calibration and validation. Each approach has peer review support by the broader scientific community, and would provide adequate means for any state to develop scientifically defensible numeric nutrient criteria.

In cases where scientifically defensible numeric criteria cannot be derived, EPA regulations provide that narrative criteria should be adopted. 40 CFR 131.11(b)(2). Narrative criteria are descriptions of conditions necessary for the water body to attain its designated use. Often expressed as requirements that waters remain "free from" certain characteristics, narrative criteria can be the basis for controlling nuisance conditions such as floating debris or objectionable deposits. States often establish narrative criteria, such as "no toxics in toxic amounts," in order to limit toxic pollutants in waters where the state has yet to adopt an EPA-recommended numeric criterion and or where EPA has yet to derive a recommended numeric criterion. For nutrients, in the absence of numeric nutrient criteria, states have often established narrative criteria such as "no nuisance algae." Reliance on a narrative criterion to derive NPDES permit limits, assess water bodies for listing purposes, and establish TMDL targets can often be a difficult, resource-intensive, and time-consuming process that entails conducting case-by-case analyses to determine the appropriate numeric target value based on a site-specific translation of the narrative criterion. Narrative criteria are most effective when they are supported by procedures to translate them into quantitative expressions of the conditions necessary to protect the designated use.

D. Agency Determination Regarding Florida

On January 14, 2009, EPA determined under CWA section 303(c)(4)(B) that new or revised WQS in the form of numeric nutrient water quality criteria are necessary to meet the requirements of the CWA in the State of Florida. Florida's currently applicable narrative nutrient criterion provides, in part, that "in no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna." Florida Administrative Code (F.A.C.) 62–302–530(47)(b). EPA determined that Florida's narrative nutrient criterion alone was insufficient to ensure protection of applicable designated uses. The determination recognized that Florida has a proactive and innovative program to address nutrient pollution through a strategy of comprehensive National Pollutant Discharge Elimination System (NPDES) permit regulations, Basin Management Action Plans (BMAPs) for implementation of TMDLs which include controls on nonpoint sources, municipal wastewater treatment technology-based requirements under the 1990 Grizzle-Figg Act, and rules to limit nutrient pollution in geographically specific areas like the Indian River Lagoon System, the Everglades Protection Area, and Wekiva Springs. However, the determination noted that despite Florida's intensive efforts to diagnose and control nutrient pollution, substantial water quality degradation from nutrient over-enrichment remains a significant challenge in the State and one that is likely to worsen with continued population growth and land-use changes.

Florida's implementation of its narrative water quality criterion for nutrients is based on site-specific detailed biological assessments and analyses, together with site-by-site outreach and stakeholder engagement in the context of specific CWA-related

[38] U.S. EPA. 2000a. Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs. Office of Water, Washington, DC. EPA–822–B–00–001.

[39] U.S. EPA. 2000b. Nutrient Criteria Technical Guidance Manual: Rivers and Streams. Office of Water, Washington, DC. EPA–822–B–00–002.

[40] U.S. EPA. 2001. Nutrient Criteria Technical Manual: Estuarine and Coastal Marine Waters. Office of Water, Washington, DC. EPA–822–B–01–003, and wetlands (U.S. EPA, 2007).

actions, specifically NPDES permits, TMDLs required for both permitting and BMAP activities, and assessment and listing decisions. When deriving NPDES water quality-based permit limits, Florida initially conducts a site-specific analysis to determine whether a proposed discharge has the reasonable potential to cause or contribute to an exceedance of its narrative nutrient water quality criterion. The State then determines what levels of nutrients would "cause an imbalance in natural populations of aquatic flora or fauna" and translates those levels into numeric "targets" for the receiving water and any other affected waters. Determining on a water-by-water basis for thousands of State waters the levels of nutrients that would "cause an imbalance in natural populations of aquatic flora or fauna" is a difficult, lengthy, and data-intensive undertaking. This work involves performing detailed site-specific analyses of the receiving water and any other affected waters. If the State has not already completed this analysis for a particular water, it can be very difficult to accurately determine in the context and timeframe of the NPDES permitting process. For example, in some cases, adequate data may take several years to collect and therefore, may not be available for a particular water at the time of permitting issuance or re-issuance.

When developing TMDLs, as it does when determining reasonable potential and deriving limits in the permitting context, Florida translates the narrative nutrient criterion into a numeric target that the State determines is necessary to meet its narrative criterion and protect applicable designated uses. This process also involves a site-specific analysis to determine the nutrient levels that would "cause an imbalance in natural populations of aquatic flora or fauna" in a particular water. Each time a site-specific analysis is conducted to determine what the narrative criterion means for a particular water body in developing a TMDL, the State takes site-specific considerations into account and devises a method that works with the available data and information.

In adopting the Impaired Waters Rule (IWR), Florida took important steps toward improving implementation of its narrative nutrient criterion by establishing and publishing an assessment methodology to identify waters impaired for nutrients. This methodology includes numeric nutrient impairment "thresholds" above which waters are automatically deemed impaired. Even when a listing is made, however, development of a TMDL is then generally required to support issuance of a permit or development of a BMAP.

Based on the considerations outlined above, EPA concluded that numeric criteria for nutrients will enable the State to take necessary actions to protect the designated uses, in a timelier manner. The resource intensive efforts to interpret the State's narrative criterion contribute to delays in implementing the criterion and therefore, affect the State's ability to provide the needed protections for applicable designated uses. EPA, therefore, determined that numeric nutrient criteria are necessary for the State of Florida to meet the CWA requirement to have criteria that protect applicable designated uses.

The combined impacts of urban and agricultural activities, along with Florida's physical features and important and unique aquatic ecosystems, made it clear that the current use of the narrative nutrient criterion alone and the resulting delays that it entails do not ensure protection of applicable designated uses for the many State waters that are either unimpaired and need protection or have been listed as impaired and require loadings reductions. EPA determined that numeric nutrient water quality criteria would strengthen the foundation for identifying impaired waters, establishing TMDLs, and deriving water quality-based effluent limits in NPDES permits, thus providing the necessary protection for the State's designated uses in its waters. In addition, numeric nutrient criteria will support the State's ability to effectively partner with point and nonpoint sources to control nutrients, thus further providing the necessary protection for the designated uses of the State's water bodies. EPA's determination is available at the following Web site: *http://www.epa.gov/waterscience/standards/rules/fl-determination.htm.*

The January 14, 2009 determination stated EPA's intent to propose numeric nutrient criteria for lakes and flowing waters in Florida within twelve months of the January 14, 2009 determination, and for estuarine and coastal waters within 24 months of the determination. EPA has also entered into a Consent Decree with Florida Wildlife Federation, Sierra Club, Conservancy of Southwest Florida, Environmental Confederation of Southwest Florida, and St. Johns Riverkeeper, committing to the schedule stated in EPA's January 14, 2009 determination to propose numeric nutrient criteria for lakes and flowing waters in Florida by January 14, 2010, and for Florida's estuarine and coastal waters by January 14, 2011. The Consent Decree also requires that final rules be issued by October 15, 2010 for lakes and flowing waters, and by October 15, 2011 for estuarine and coastal waters.

In accordance with the determination and EPA's Consent Decree, EPA is proposing numeric nutrient criteria for Florida's lakes and flowing waters with this proposed rule. As envisioned in EPA's determination, this time frame has allowed EPA to utilize the large data set collected by Florida as part of a detailed analysis of nutrient-impaired waters. In a separate rulemaking, EPA intends to develop and propose numeric nutrient criteria for Florida's estuarine and coastal waters by January 14, 2011. EPA's determination did not apply to Florida's wetlands, and as a result, Florida's wetlands will not be addressed in this rulemaking or in EPA's forthcoming rulemaking involving estuarine and coastal waters.

III. Proposed Numeric Nutrient Criteria for the State of Florida's Lakes and Flowing Waters

A. General Information

(1) Which Water Bodies Are Affected by This Proposed Rule?

The criteria proposed in this rulemaking apply to lakes and flowing waters of the State of Florida. EPA's proposal defines "lakes and flowing waters" to mean inland surface waters that have been classified as Class I (Potable Water Supplies) or Class III (Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife) water bodies pursuant to Rule 62–302.400, F.A.C., excluding wetlands, and which are predominantly fresh waters. Pursuant to Rule 62–302.200, F.A.C., EPA's proposal defines "predominantly fresh waters" to mean surface waters in which the chloride concentration at the surface is less than 1,500 milligrams per liter (mg/L) and "surface water" means water upon the surface of the Earth, whether contained in bounds created naturally, artificially, or diffused. Waters from natural springs shall be classified as surface water when it exits from the spring onto the Earth's surface.

In this rulemaking, EPA is proposing numeric nutrient criteria for the following four water body types: Lakes, streams, springs and clear streams, and canals in south Florida. EPA's proposal also includes definitions for each of these waters. "Lake" means a freshwater water body that is not a stream or other watercourse with some open contiguous water free from emergent vegetation. "Stream" means a free-flowing, predominantly fresh surface water in a

defined channel, and includes rivers, creeks, branches, canals (outside south Florida), freshwater sloughs, and other similar water bodies. "Spring" means the point where underground water emerges onto the Earth's surface, including its spring run. "Spring run" means a free-flowing water that originates from a spring or spring group whose primary (>50%) source of water is from a spring or spring group. Downstream waters from a spring that receive 50% or more of their flow from surface water tributaries are not considered spring runs. "Clear stream" means a free-flowing water whose color is less than 40 platinum cobalt units (PCU, which is assessed as true color free from turbidity). Classification of a stream as clear or colored is based on the instantaneous color of the sample. Consistent with Rule 62–312.020, F.A.C., "canal" means a trench, the bottom of which is normally covered by water with the upper edges of its two sides normally above water. Consistent with Rule 62–302.200, F.A.C., all secondary and tertiary canals wholly within Florida's agricultural areas are classified as Class IV waters, not Class III, and therefore, are not subject to this proposed rulemaking. The classes of waters, as specified in this paragraph and as subject to this proposed rulemaking, are hereinafter referred to as "lakes and flowing waters" in this proposed rule.

The CWA requires adoption of WQS for "navigable waters." CWA section 303(c)(2)(A). The CWA defines "navigable waters" to mean "the waters of the United States, including the territorial seas." CWA section 502(7). Whether a particular water body is a water of the United States is a water body-specific determination. Every water body that is a water of the United States requires protection under the CWA. EPA is not aware of any waters of the United States in Florida that are currently exempted from the State's WQS. For any privately owned water in Florida that is a water of the United States, the applicable numeric nutrient criteria for those types of waters would apply. This rule does not apply to waters for which the Miccosukee Tribe of Indians or Seminole Tribe of Indians has obtained Treatment as a State for Section 303 of the CWA, pursuant to Section 518 of the CWA.

(2) Background on EPA's Derivation of Proposed Numeric Nutrient Criteria for the State of Florida's Lakes and Flowing Waters

In proposing numeric nutrient criteria for Florida's lakes and flowing waters, EPA developed numeric nutrient criteria to support a balanced natural population of flora and fauna in Florida lakes and flowing waters, and to ensure, to the extent that the best available science allows, the attainment and maintenance of the WQS of downstream waters. Where numeric nutrient criteria do not yet exist, in proposed or final form, for a water body type that is downstream from a lake or flowing water (*e.g.,* estuaries) in Florida, EPA has interpreted the currently applicable State narrative criterion, "in no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna," to ensure that the numeric criteria EPA is proposing would not result in nutrient concentrations that would "cause an imbalance in natural populations of aquatic flora or fauna" in such downstream water bodies. EPA's actions are consistent with and support existing Florida WQS regulations. EPA used the best available science to estimate protective loads to downstream estuaries, and then used these estimates (and assumptions about the distribution of the load throughout the watershed), along with mathematical models, to calculate concentrations in upstream flowing waters that would have to be met to ensure the attainment and maintenance of the State's narrative criterion applicable to downstream estuaries.

EPA relied on an extensive amount of Florida-specific data, collected and analyzed, in large part, by FDEP and then reviewed by EPA. EPA worked extensively with FDEP on data interpretation and technical analyses for developing scientifically sound numeric nutrient criteria for this proposed rulemaking. Because EPA is committed to ensuring the use of the best available science, the Agency submitted its criteria derivation methodologies, developed by EPA in close collaboration with FDEP experts and scientists, to an independent, external, scientific peer review in July 2009.

To support derivation of EPA's proposed lakes criteria, EPA searched extensively for relevant and useable lake data. In this case the effort resulted in 33,622 samples from 4,417 sites distributed among 1,599 lakes statewide.

Regarding the derivation of EPA's proposed streams criteria, EPA evaluated water chemistry data from 11,761 samples from 6,342 sites statewide in the "all streams" dataset. EPA also used data collected for linking nutrients to specific biological responses that consisted of 2,023 sample records from more than 1,100 streams.

For EPA's proposed springs and clear streams criteria, EPA evaluated data gathered and synthesized by FDEP using approximately 50 studies including historical accounts, laboratory nutrient amendment bioassays, field surveys, and TMDL reports that document increasing patterns of nitrate-nitrite levels and corresponding ecosystem level responses observed within the last 50 years. At least a dozen of these studies were used to develop and support the proposed nitrate-nitrite criterion for spring ecosystems.

For EPA's proposed criteria for canals for south Florida, EPA started with more than 1,900,000 observations from more than 3,400 canal sites. These were filtered for data relevant to nutrient criteria development and resulted in observations at more than 500 sites for variables (nutrient parameter data and chlorophyll *a* data). Reliance on these extensive sets of data has enabled EPA to use the best available information and science to derive robust, scientifically sound criteria applicable to Florida's lakes and flowing waters.

Section III describes EPA's proposed numeric nutrient criteria for Florida's lakes, streams, springs and clear streams, and canals and the associated methodologies EPA employed to derive them. These criteria are based on sound scientific rationale and will protect applicable designated uses in Florida's lakes and flowing waters. EPA solicits public comment on these criteria and their derivation. This preamble also includes discussions of alternative approaches that EPA considered but did not select as the preferred option to derive the proposed criteria. EPA invites public comment on the alternative approaches as well. In addition, EPA requests public comment on whether the proposed numeric nutrient criteria are consistent with Florida's narrative criterion with respect to nutrients at Rule 62–302.530(47)(a), F.A.C., specifying that the discharge of nutrients shall be limited as needed to prevent violations of other standards. EPA seeks scientific data and information on whether, for example, nutrient criteria should be more stringent to prevent exceedances of dissolved oxygen criteria.

EPA has created a technical support document that provides detailed information regarding all methodologies discussed herein and the derivation of the proposed criteria. This document is entitled "Technical Support Document for EPA's Proposed Rule For Numeric Nutrient Criteria for Florida's Inland Surface Fresh Waters" (hereafter, EPA TSD for Florida's Inland Waters) and is

located at *www.regulations.gov,* Docket ID No. EPA–HQ–OW–2009–0596.

B. Proposed Numeric Nutrient Criteria for the State of Florida's Lakes

Florida's 2008 Integrated Water Quality Assessment Report[41] indicates that Florida lakes provide important habitats for plant and animal species and are a valuable resource for human activities and enjoyment. The State has more than 7,700 lakes, which occupy close to 6% of its surface area. The largest lake, Lake Okeechobee (covering 435,840 acres), is the ninth largest lake in surface area in the United States and the second largest freshwater lake wholly within the coterminous United States.[42] Most of the State's lakes are shallow, averaging seven to 20 feet deep, although many sinkhole lakes and parts of other lakes are much deeper.

Florida's lakes are physically, chemically, and biologically diverse. Many lakes are spring-fed, others are seepage lakes fed by ground water, and still others (about 20%) are depression lakes fed by surface water sources. For purposes of developing numeric nutrient criteria, EPA identified two classifications of lakes, colored lakes and clear lakes, which respond differently to inputs of TN and TP, as discussed in detail below. EPA further classified the clear lakes into clear alkaline lakes (relatively high alkalinity) and clear acidic lakes (relatively low alkalinity), which have different baseline expectations for the level of nutrients present.

(1) Proposed Numeric Nutrient Criteria for Lakes

EPA is proposing the following numeric nutrient criteria and geochemical classifications for Florida's lakes classified as Class I or III waters under Florida law (Rule 62–302.400, F.A.C.):

Long-term average lake color and alkalinity	Chlorophyll *a*[f] (µg/L)[a]	Baseline criteria[b]		Modified criteria (within these bounds)[c]	
		TP (mg/L)[a]	TN (mg/L)[a]	TP (mg/L)[a]	TN (mg/L)[a]
A	B	C	D	E	F
Colored Lakes > 40 PCU	20	0.050	1.23	0.050–0.157	1.23–2.25
Clear Lakes, Alkaline ≤ 40 PCU[d] and > 50 mg/L $CaCO_3$[e]	20	0.030	1.00	0.030–0.087	1.00–1.81
Clear Lakes, Acidic ≤ 40 PCU[d] and ≤ 50 mg/L $CaCO_3$[e]	6	0.010	0.500	0.010–0.030	0.500–0.900

[a] Concentration values are based on annual geometric mean not to be surpassed more than once in a three-year period. In addition, the long-term average of annual geometric mean values shall not surpass the listed concentration values. (Duration = annual; Frequency = not to be surpassed more than once in a three-year period or as a long-term average).

[b] Baseline criteria apply unless data are readily available to calculate and apply lake-specific, modified criteria as described below in footnote c and the Florida Department of Environmental Protection issues a determination that a lake-specific modified criterion is the applicable criterion for an individual lake. Any such determination must be made consistent with the provisions in footnote c below. Such determination must also be documented in an easily accessible and publicly available location, such as an official State Web site.

[c] If chlorophyll *a* is below the criterion in column B and there are representative data to calculate ambient-based, lake-specific, modified TP and TN criteria, then FDEP may calculate such criteria within these bounds from ambient measurements to determine lake-specific, modified criteria pursuant to CWA section 303(c). Modified TN and TP criteria must be based on at least three years of ambient monitoring data with (a) at least four measurements per year and (b) at least one measurement between May and September and one measurement between October and April each year. These same data requirements apply to chlorophyll *a* when determining whether the chlorophyll *a* criterion is met for purposes of developing modified TN and TP criteria. If the calculated TN and/or TP value is below the lower value, then the lower value is the lake-specific, modified criterion. If the calculated TN and TP value is above the upper value, then the upper value is the lake-specific, modified criterion. Modified TP and TN criteria may not exceed criteria applicable to streams to which a lake discharges. If chlorophyll *a* is below the criterion in column B and representative data to calculate modified TN and TP criteria are not available, then the baseline TN and TP criteria apply. Once established, modified criteria are in place as the applicable WQS for all CWA purposes.

[d] Platinum Cobalt Units (PCU) assessed as true color free from turbidity. Long-term average color based on a rolling average of up to seven years using all available lake color data.

[e] If alkalinity data are unavailable, a specific conductance of 250 micromhos/cm may be substituted.

[f] Chlorophyll *a* is defined as corrected chlorophyll, or the concentration of chlorophyll *a* remaining after the chlorophyll degradation product, phaeophytin *a*, has been subtracted from the uncorrected chlorophyll *a* measurement.

The following section describes the methodologies EPA used to develop its proposed numeric nutrient criteria for lakes. EPA is soliciting comments and scientific data regarding the proposed criteria for lakes and their derivation. Section III.B(4) describes one alternative approach and two supplementary modifications considered by the Agency in developing this lakes proposal. EPA solicits comments and data on that approach and those modifications.

(2) Methodologies for Deriving EPA's Proposed Criteria for Lakes

The process used to develop proposed numeric nutrient criteria for a range of diverse waters begins with grouping those waters into categories that generally have a common response to elevated levels of the stressor pollutants, in this case TN and TP. The following sections provide a discussion of (1) the lake classification approach for this proposal, (2) identification of an appropriate response variable and the levels of that variable that indicate or represent healthy aquatic conditions associated with each water body classification, and (3) the concentrations of TN and TP that correspond to protective levels of the response variable, in this case, chlorophyll *a*.

EPA has recommended that nutrient criteria include both causal (*e.g.,* TN and TP) and response variables (*e.g.,* chlorophyll *a* and some measure of clarity) when establishing numeric nutrient criteria for water bodies.[43] EPA

[41] FDEP. 2008. Integrated Water Quality Assessment for Florida: 2008 305(b) Report and 303(d) List Update. Florida Department of Environmental Protection.

[42] Fernald, E.A. and E.D. Purdum. 1998. Water Resources Atlas of Florida. Tallahassee: Institute of Science and Public Affairs, Florida State University.

[43] U.S. EPA. 1998. National Strategy for the Development of Regional Nutrient Criteria. Office of Water, Washington, DC. EPA 822–R–98–002; Grubbs, G. 2001. U.S. EPA. (Memorandum to Directors of State Water Programs, Directors of Great Water Body Programs, Directors of Authorized Tribal Water Quality Standards Programs and State and Interstate Water Pollution Control Administrators on Development and Adoption of Nutrient Criteria into Water Quality Standards. November 14, 2001); Grumbles, B.H. 2007. U.S. EPA. (Memorandum to Directors of State Water Programs, Directors of Great Water Body Programs, Directors of Authorized Tribal Water Quality Standards Programs and State and Interstate Water Pollution Control Administrators on Nutrient Pollution and Numeric Water Quality Standards. May 25, 2007).

recommends causal variables, in part, to have the means to develop source control targets and, in part, to have the means to assess water body conditions with knowledge that responses can be variable, suppressed, delayed, or expressed at different locations. EPA recommends response variables, in part, to have a means to assess water body conditions that synthesize the effect of causal variables over time, recognizing the daily, seasonal, and annual variability in measured nutrient levels.[44] The ability to establish protective criteria for both causal and response variables depends on available data and scientific approaches to evaluate these data. For its lake criteria, EPA is proposing causal variables for TN and TP and a response variable for chlorophyll *a*. For water clarity, Florida has criteria for transparency and turbidity, applicable to all Class I and III waters, expressed in terms of a measurable deviation from natural background (Rules 32–302.530(67) and (69), F.A.C.). For further information on this topic, refer to EPA's TSD for Florida's Inland Waters.

Interested readers should consult EPA TSD for Florida's Inland Waters, Chapter 1: Methodology for Deriving U.S. EPA's Proposed Criteria for Lakes, for more detailed information, data, and graphs supporting the development of the proposed lake criteria.

(a) Methodology for Proposed Lake Classification

Based on analyses of geochemical influences in Florida's lakes, EPA proposes the following classification scheme for Florida lakes: (1) Colored Lakes > 40 Platinum Cobalt Units (PCU), (2) Clear Lakes ≤ 40 PCU with alkalinity > 50 mg/L calcium carbonate ($CaCO_3$), and (3) Clear Lakes ≤ 40 PCU with alkalinity ≤ 50 mg/L $CaCO_3$.

Following original work conducted by FDEP, EPA considered several key characteristics to categorize Florida's lakes and tailor numeric nutrient criteria, recognizing that different types of lakes in Florida may respond differently to nutrients. Many of Florida's lakes contain dissolved organic matter leached from surface vegetation that colors the water. More color in a lake limits light penetration within the water column, which in turn limits algal growth. Thus, in lakes with colored water, higher levels of nutrients may occur without exceeding desired algal levels. EPA evaluated the relationships between nutrients and algal responses for these waters (as measured by chlorophyll *a* concentration), which indicated that water color influences algal responses to nutrients. Based on this analysis, EPA found color to be a significant factor for categorizing lakes. More specifically, EPA found the correlations between nutrients and chlorophyll *a* concentrations to be stronger and less variable when lakes were categorized into two distinct groups based on a threshold of 40 PCU. This threshold is consistent with the distinction between clear and colored lakes long observed in Florida.[45] Different relationships between nutrients and chlorophyll *a* emerged when lakes were characterized by color, with clear lakes demonstrating greater sensitivity to nutrients as would be predicted by the increased light penetration, which promotes algal growth.

Within the clear lakes category, where color is not generally the controlling factor in algal growth, EPA evaluated alkalinity as an additional distinguishing characteristic. Calcium carbonate ($CaCO_3$), dissolved from limestone formations and calcareous soils, affects the alkalinity and pH of groundwater that feeds into lakes. Alkalinity and pH increase when water is in contact with limestone or limestone-derived soil. Limestone is also a source of TP, and lakes that are higher in alkalinity in Florida are often associated with naturally elevated TP levels. These types of lakes are often in areas of the State where the underlying geology includes limestone. The alkalinity (measured as $CaCO_3$) of Florida clear lakes ranges from zero to well over 200 mg/L. FDEP's Nutrient Criteria Technical Advisory Committee (TAC) evaluated available data from Florida lakes and concluded that 50 mg/L alkalinity as $CaCO_3$ is an appropriate threshold above which associated nutrient levels would be expected to be significantly elevated among clear lakes. EPA concluded that FDEP's proposed approach of using 50 mg/L alkalinity as $CaCO_3$ is an appropriate distinguishing characteristic in clear lakes in Florida because lakes with alkalinity ≤50 $CaCO_3$ represent a comprehensive group of lakes that may be naturally oligotrophic. Thus, EPA proposes to classify Florida clear lakes as either acidic (≤50 mg/L alkalinity as $CaCO_3$) or alkaline (>50 mg/L alkalinity as $CaCO_3$).

EPA recognizes that in certain cases FDEP may not have historic alkalinity data on record to classify a particular clear lake as either alkaline or acidic. When alkalinity data are unavailable, EPA proposes a specific conductivity threshold of 250 microSiemens per centimeter (μS/cm) as a substitute for the threshold of 50 mg/L alkalinity as $CaCO_3$. Specific conductivity is a measure of the ionic activity in water and a data analysis performed by FDEP and re-examined by EPA found that a specific conductivity threshold value of 250 μS/cm is sufficiently correlated with alkalinity to serve as a surrogate measure. Of these two measures, alkalinity is the preferred parameter to measure because it is less variable and therefore, a more reliable indicator, and also because it is a more direct measure of the presence of underlying geology associated with elevated nutrient levels.

EPA solicits comment on the proposed categorization scheme and associated thresholds used to classify Florida's lakes. Please see Section III.B(4)(b) below in which EPA invites comment on alternative lake categorization approaches that EPA considered, in particular, those approaches with respect to alkalinity classification and lakes occurring in sandhills of northwestern and central Florida.

(b) Methodology for Proposed Chlorophyll *a* Criteria

Because excess algal growth is associated with degradation in aquatic life and because chlorophyll *a* levels are a measure of algal growth, EPA is using chlorophyll *a* levels as indicators of healthy biological conditions, supportive of aquatic life in each of the categories of Florida's lakes described above. EPA found multiple lines of evidence supporting chlorophyll *a* criteria as an effective indicator of ambient conditions that would be protective of Florida's aquatic life use in lakes. These lines of evidence included trophic state of lakes, historical reference conditions in Florida lakes, and model results.

As a primary line of evidence, EPA reviewed and evaluated the Trophic State Index (TSI) information in deriving chlorophyll *a* criteria that are protective of designated aquatic life uses in Florida's lakes. The TSI quantifies the degree of eutrophication (oligotrophic, mesotrophic, eutrophic)[46] in a water body based on observed measurements of nutrients and chlorophyll *a*. These types of boundaries are commonly used in scientific literature and represent an

[44] U.S. EPA. 2000. Nutrient Criteria Technical Guidance Manual: Rivers and Streams. Office of Water, Washington, DC. EPA–822–B–00–002.

[45] Shannon, E.E. and P.L. Brezonik. 1972. Limnological characteristics of north and central Florida lakes. *Limnol. Oceanogr.* 17(1): 97–110.

[46] Trophic state describes the nutrient and algal state of an aquatic system: Oligotrophic (low nutrients and algal productivity), mesotrophic (moderate nutrients and algal productivity), and eutrophic (high nutrients and algal productivity).

established, scientific classification system to describe current status and natural expectations for lake conditions with respect to nutrients and algal productivity.[47] EPA's review of TSI studies [48] [49] indicated that in warm-water lakes such as those in Florida, TSI values of 50, 60, and 70 are associated with chlorophyll *a* concentrations of 10, 20, and 40 micrograms per liter (µg/L), respectively. Studies indicated that mesotrophic lakes in Florida have TSI values ranging from 50 to 60 and eutrophic lakes have TSI values ranging from 60 to 70. Thus a TSI value of 60 (chlorophyll *a* concentration of 20 µg/L) represents the boundary between mesotrophy and eutrophy. EPA concluded that mesotrophic status is the appropriate expectation for colored and clear alkaline lakes because they receive significant natural nutrient input and support a healthy diversity of aquatic life in warm, productive climates such as Florida, and mesotrophy represents a lake maintaining a healthy balance between benthic macrophytes (*i.e.,* plants growing on the lake bottom) and algae in such climates under such conditions. However, clear acidic lakes in Florida do not receive comparable natural nutrient input to be classified as mesotrophic, and for those lakes, EPA has developed criteria that correspond to an oligotrophic status. Oligotrophic lakes support less algal growth and have lower chlorophyll *a* levels. Studies indicate that a TSI value of 45 reflects an approximate boundary between oligotrophy and mesotrophy (corresponding to chlorophyll *a* at about 7 µg/L). EPA requests comment on these conclusions regarding oligotrophic and mesotrophic status expectations for these categories of Florida lakes.

Another line of evidence that supports EPA's proposed chlorophyll *a* criteria is historical reference conditions. Diatoms are a very common type of free-floating algae (*i.e.,* phytoplankton) that have shells or "frustules" made of silica that are preserved in the fossil record. Diatoms preserved in lake sediments can be used to infer chlorophyll *a* levels in lakes prior to any human disturbance. Paleolimnological studies [50] that examined preserved diatom frustules in Florida lake sediments indicate that historical levels of chlorophyll *a* are consistent with mesotrophic expectations derived from the TSI studies described above, with chlorophyll *a* levels falling just below the selected criterion for mesotrophic lakes. (These studies did not evaluate lakes expected to be naturally oligotrophic so there is no comparable information for those lakes).

In addition to this evidence, EPA used information from the application of a Morphoedaphic Index (MEI) model [51] that predicts nutrient and chlorophyll *a* concentrations for any lake given its depth, alkalinity, and color to support the proposed chlorophyll *a* criteria. Scientists from the St. John's Water Management District presented modeling results for various Florida lakes in each colored and clear category at the August 5, 2009 meeting of the Nutrient Criteria TAC in Tallahassee. In addition to predicting natural or reference conditions, these scientists used the model to predict chlorophyll *a* and TP concentrations associated with a 10% reduction in water transparency for a set of lakes with varying color levels and alkalinities. Because submerged aquatic vegetation is dependent on light, maintaining a lake's historic balance between algae and submerged aquatic plants requires maintaining overall water transparency. The risk of disrupting the balance between algae and submerged aquatic plants increases when reductions in transparency exceed 10%. The MEI predictions corroborated the results from lake TSI studies and investigations of paleolimnological reference conditions because natural or reference predictions (*i.e.,* a "no effect" level) were generally below selected criteria levels and 10% transparency loss predictions (*i.e.,* a "threshold effect" level) were at or slightly above selected criteria levels. EPA considered these lines of evidence to develop the proposed chlorophyll *a* criteria, discussed below by lake class:

(i) *Colored Lakes:* EPA proposes a chlorophyll *a* criterion of 20 µg/L in colored lakes to protect Florida's designated aquatic life uses. As indicated by the warm-water TSI studies discussed above, chlorophyll *a* concentrations of 20 µg/L represent the boundary between mesotrophy and eutrophy. Because mesotrophy maintains a healthy balance of plant and algae populations in these types of lakes, limiting chlorophyll *a* concentrations to 20 µg/L would, therefore, protect colored lakes in Florida from the adverse impacts of eutrophication. Paleolimnological studies of six colored lakes in Florida demonstrated natural (*i.e.,* before human disturbance) chlorophyll *a* levels in the range of 14–20 µg/L and the MEI model predicted reference chlorophyll *a* concentrations of 1–25 µg/L for a set of colored lakes in Florida. The model also predicted that concentrations of chlorophyll *a* ranging from 15–36 µg/L in individual lakes would result in a 10% loss of transparency (all but two lakes were above 20 µg/L). Because of natural variability, it is typical for ranges of natural or reference conditions to overlap with ranges of where adverse effects may begin occurring (such as the 10% transparency loss endpoint) for any sample population of lakes. In addition, these modeling results, as with any line of evidence, have uncertainty associated with any individual lake prediction. Given these considerations, EPA found that because the clear majority (eight of eleven) of lakes had predicted natural or referenced conditions below 20 µg/L chlorophyll *a* and the clear majority (nine of eleven) of lakes had predicted 10% transparency loss above 20 µg/L chlorophyll *a,* these results supported the TSI-based proposed chlorophyll *a* criterion.

(ii) *Clear, Alkaline Lakes:* EPA proposes a chlorophyll *a* concentration of 20 µg/L in clear, alkaline lakes to protect Florida's designated aquatic life uses. As noted in Section III.B(2)(a), alkalinity and TP are often co-occurring inputs to Florida lakes because of the presence of TP in limestone, which is often a feature of the geology in Florida. Clear, alkaline lakes, therefore, are likely to be naturally mesotrophic. EPA's analysis determined that aquatic life in clear, alkaline lakes is protected at similar chlorophyll *a* levels as colored lakes (at the TSI boundary between mesotrophy and eutrophy). The MEI model predicted reference chlorophyll *a* concentrations of 12–24 µg/L for a set of clear, alkaline lakes in Florida, and predicted a 10% loss of transparency when chlorophyll *a* concentrations ranged from 19–33 µg/L. Similar to the results for colored lakes, half of the clear, alkaline lakes had predicted natural or referenced conditions at or below 20 µg/L chlorophyll *a* and all but one clear,

[47] Carlson, R.E. 1977. A trophic state index for lakes. *Limnol. Oceanogr.* 22:361–369.

[48] Carlson, R.E. 1977. A trophic state index for lakes. *Limnol. Oceanogr.* 22:361–369.

[49] Salas and Martino. 1991. A simplified phosphorus trophic state index for warm water tropical lakes. *Wat. Res.* 25:341–350.

[50] Whitmore and Brenner. 2002. Paleologic characterization of pre-disturbance water quality conditions in EPA defined Florida lake regions. Univ. Florida Dept. Fisheries and Aquatic Sciences. 30 pp.

[50] Whitmore and Brenner. 2002. Paleologic characterization of pre-disturbance water quality conditions in EPA defined Florida lake regions. Univ. Florida Dept. Fisheries and Aquatic Sciences. 30 pp.

[51] Vighi and Chiaudani. 1985. A simple method to estimate lake phosphorus concentrations resulting from natural background loadings. *Wat. Res.*19:987–991.

alkaline lake had predicted 10% transparency loss above 20 µg/L chlorophyll *a.* Thus, EPA found this evidence to be supportive of the proposed chlorophyll *a* criterion. EPA solicits comment on this chlorophyll *a* criterion and the evidence EPA used to support the criterion.

(iii) *Clear, Acidic Lakes:* EPA proposes a chlorophyll *a* concentration of 6 µg/L in clear, acidic lakes to ensure balanced natural populations of flora and fauna (*i.e.,* aquatic life) in these lakes. In contrast to colored lakes and clear, alkaline lakes, this category of lakes does not receive significant natural nutrient inputs from groundwater or other surface water sources. EPA has thus based the proposed criteria on an expectation that these lakes should be oligotrophic in order to support balanced natural populations of flora and fauna. Some of Florida's clear, acidic lakes, in the sandhills in northwestern and central Florida, have been identified as extremely oligotrophic [52] with chlorophyll *a* levels of less than 2 µg/L. As discussed above, warm water TSI studies suggest a chlorophyll *a* level of approximately 7 µg/L at the oligotrophic-mesotrophic boundary.

In July 2009, FDEP proposed a chlorophyll *a* criterion for clear, acidic lakes of 9 µg/L.[53] In comments sent to EPA via e-mail in October 2009,[54] FDEP reported that the Nutrient TAC suggested in June 2009 that maintaining chlorophyll *a* below 10 µg/L in clear, acidic lakes would be protective of the designated use, because a value of < 10 µg/L would still be categorized as oligotrophic. However, EPA's review of the TSI categorization based on the work of Salas and Martino (1991) on warm water lakes indicates that a chlorophyll *a* of 10 µg/L (TSI of 50) would better represent the central tendency of the mesotrophic category rather than the oligotrophic-mesotrophic boundary. In the October 2009 comments, FDEP also presented an analysis of lake data that showed lack of correlation between an index of benthic macroinvertebrate health and chlorophyll *a* levels in the range of 5–10 µg/L as supporting evidence for a chlorophyll a criterion of 9 µg/L in clear acidic lakes. However, within this small range of chlorophyll *a,* it is not surprising that a correlation with an indicator responsive to numerous aspects of natural conditions and stressors such as benthic macroinvertebrate health would not exhibit a clear statistical relationship. Importantly, there was some evidence of meaningful distinctions within the range of 5–10 µg/L chlorophyll *a* based on endpoints more directly responsive to nutrients. In this case, the MEI model predicted reference chlorophyll *a* concentrations within the range of 1.4–7.0 µg/L (with seven of the eight values below 5 µg/L) for a set of clear, acidic lakes in Florida, and predicted a 10% loss of transparency when chlorophyll *a* concentrations ranged from 5.6–11.8 µg/L (with five of the eight values below 7 µg/L). All but one of the clear, acid lakes had predicted natural or reference conditions below 6 µg/L chlorophyll *a* and the majority (six of eight) of clear, alkaline lakes had predicted 10% transparency loss above 6 µg/L chlorophyll *a.* Given available information on reference condition and predicted effect levels, EPA adjusted the approximate oligotrophic-mesotrophic boundary value of 7 µg/L slightly downward to 6 µg/L as the proposed chlorophyll *a* criterion. For determining the proposed chlorophyll *a* criterion in the three lake categories, only in this case for clear, acid lakes did EPA use reference condition information and predicted effect levels for more than just support of the value coming from the TSI-based line of evidence, and in this case EPA deviated from that value by only 1 µg/L.

EPA specifically solicits comment on the chlorophyll *a* criterion of 6 ug/L and the evidence EPA used to support the criterion. EPA also solicits comment on whether a higher criterion of 9 ug/L, as proposed by Florida in its July 2009 proposed nutrient WQS, would be fully protective of clear acidic lakes, and the scientific basis for such a conclusion.

(c) Methodology for Proposed Total Phosphorus (TP) and Total Nitrogen (TN) Criteria in Lakes

EPA proposes TP and TN criteria for each of the classes of lakes described in Section III.B(2)(a). The proposed TP and TN criteria are based principally on independent statistical correlations between TN and chlorophyll *a,* and TP and chlorophyll *a* for clear and colored lakes in Florida. Each data point used in the statistical correlations represents a geometric mean of samples taken over the course of a year in a particular Florida lake. After establishing the protective levels of chlorophyll *a* as 20 µg/L for colored lakes and clear alkaline lakes and 6 µg/L for clear acidic lakes, EPA evaluated the data on TN and TP concentrations associated with these chlorophyll *a* levels and the statistical analyses performed by FDEP in support of the State's efforts to develop numeric nutrient criteria.

These analyses showed that the response dynamics of TN and TP with chlorophyll *a* were different for colored versus clear lakes, as would be expected because color blocks light penetration in the water column and limits algal growth. These analyses also showed that the correlation relationships for TN and TP compared with chlorophyll *a* in acidic and alkaline clear lakes were comparable, as would be expected because alkalinity does not affect light penetration. These analyses are available in EPA's TSD for Florida's Inland Waters, Chapter 1: Methodology for Deriving U.S. EPA's Proposed Criteria for Lakes.

The difference between clear, acidic and clear, alkaline lakes is that clear, alkaline lakes naturally receive more nutrients and, therefore, have an expected trophic status of mesotrophic to maintain a healthy overall production and balance of plants and algae. On the other hand, clear, acidic lakes naturally receive much lower nutrients and, therefore, have an expected trophic status of oligotrophic to maintain a healthy, but lower than mesotrophic, level of plant and algae aquatic life. Because of the different expectations for trophic condition, different chlorophyll *a* criteria are appropriate (as mentioned earlier, chlorophyll *a* is a measure of algal production). Although clear, alkaline lakes and colored lakes have the same proposed chlorophyll *a* criterion, they will have different TP and TN criteria because of the effect of color on light penetration and algal growth.

The TN and TP values EPA is proposing are based on the lower and upper TN and TP values derived from the 50th percentile prediction interval of the regression (*i.e.,* best-fit line) through the chlorophyll *a* and corresponding TN or TP values plotted on a logarithmic scale. In other words, the prediction interval displays the range of TN and TP values typically associated with a given chlorophyll *a* concentration. At any given chlorophyll *a* concentration, there will be a lower

[52] Canfield, D.E., Jr., M.J. Maceina, L.M. Hodgson, and K.A. Langeland. 1983. Limnological features of some northwestern Florida lakes. *J. Freshw. Ecol.* 2:67–79; Griffith, G.E., D.E. Canfield, Jr., C.A. Horsburgh, J.M. Omernik, and S.H. Azevedo. 1997. Lake regions of Florida. Map prepared by U.S. EPA, Corvallis, OR; available at *http://www.epa.gov/wed/pages/ecoregions/fl_eco.htm* (accessed 10/09/2009).

[53] More information on this issue is available on FDEP's Web site at *http://www.dep.state.fl.us/water/wqssp/nutrients/docs/dep_responses_100909.pdf* and included in the "External Peer Review of EPA's 'Proposed Methods and Approaches for Developing Numeric Nutrient Criteria for Florida's Inland Waters' " and EPA's TSD for Florida's Inland Waters located in the docket ID No. EPA–HQ–OW–2009–0596.

[54] FDEP document titled, "DEP's Responses to EPA's 9/16 Comment Letter." October 9, 2009. Located in the docket ID EPA–HQ–OW–2009–0596.

TN or TP value and an upper TN or TP value corresponding to this prediction interval. EPA agrees with the FDEP approach that uses the 50th percentile prediction interval because it effectively separates the data into three distinct groups. This analysis of the substantial lake data collected by Florida indicates that the vast majority of monitored lakes with nutrient levels below the lower TN or TP value have associated chlorophyll *a* values below the protective chlorophyll *a* threshold level. Similarly, the vast majority of monitored lakes with measured nutrient levels above the upper TN or TP value have associated measured chlorophyll *a* values above the protective chlorophyll *a* threshold level. Between these TN and TP bounds, however, this analysis indicates that monitored lakes are equally likely to be above or below the protective chlorophyll *a* threshold level. Setting TN and TP criteria based on the bounds of the 50th percentile prediction interval, in conjunction with lake-specific knowledge of whether the lake chlorophyll *a* threshold is met, accounts for the naturally variable behavior of TN and TP while ensuring protection of aquatic life.

EPA's proposed criteria framework sets a protective chlorophyll *a* threshold and TN and TP criteria at the lower values of the range defined by the 50th percentile prediction interval for the three different categories of lakes as "baseline" criteria. The criteria framework also provides flexibility for FDEP to derive lake-specific, modified TN and TP criteria within the bounds of the upper and lower values based on at least three years of ambient measurements where a chlorophyll *a* threshold is not exceeded. More specifically, if the chlorophyll *a* criterion for an individual lake is met for a period of record of at least three years, then the corresponding TN and TP criteria may be derived from ambient measurements of TN and TP from that lake within the bounds of the lower and upper values of the prediction interval discussed above. Both the ambient chlorophyll *a* levels as well as the corresponding ambient TN and TP concentrations in the lake must be established with at least three years worth of data. EPA's proposed rule provides that these modified criteria need to be documented by FDEP. EPA's rule, however, does not require that FDEP go through a formal SSAC process subject to EPA review and approval.

In this proposed rule, EPA specifies that in no case, however, may the modified TN and TP criteria be higher than the upper value specified in the criteria bounds, nor lower than the lower value specified in the criteria bounds. In addition to nutrients, chlorophyll *a* in a lake may be limited by high water color, zooplankton grazing, mineral turbidity, or other unknown factors. In the absence of detailed, site-specific knowledge, the upper values represent increasing risk that chlorophyll *a* will exceed its criterion value. To maintain the risk at a manageable level, the upper values are not to be exceeded. EPA requests comments on this approach. EPA also requests comment on whether the rule should specify that the modified TN and TP criteria be set at levels lower than the lower value of the criteria bounds if that is what is reflected in the outcome of the ambient-based calculation.

EPA's proposed approach for TN and TP criteria in lakes reflects the natural variability in the relationship between chlorophyll *a* concentrations and corresponding TP and TN concentrations that may exist in lakes. This variability remains even after some explanatory factors such as color and alkalinity are addressed by placing lakes in different categories based on color and alkalinity because other natural factors play important roles. Natural variability in the physical, chemical, and biological dynamics for any individual lake may result from differences in geomorphology, concentrations of other constituents in lake waters, hydrological conditions and mixing, and other factors.

This approach allows for consideration of readily available site-specific data to be taken into account in the expression of TN and TP criteria, while still ensuring protection of aquatic life by maintaining the associated chlorophyll *a* level at or below the proposed chlorophyll *a* criterion level. Because the chlorophyll *a* level in a lake is the direct measure of algal production, it can be used to evaluate levels that pose a risk to aquatic life. The scientific premise for the lake-specific ambient calculation provision for modified TN and TP criteria is that if ambient lake data show that a lake's chlorophyll *a* levels are below the established criteria and its TN and/or TP levels are within the lower and upper bounds, then those ambient levels of TN and TP represent protective conditions. Basing the ambient calculation upon at least three years worth of data is a condition set to address and account for year-to-year hydrologic variability in the derivation of modified criteria. EPA requests comment on the requirement of three years worth of data for both chlorophyll *a* and TN and TP in order to use this option. Specifically, are there situations in which less than three years of data might be adequate for an adjusted TN or TP criterion?

EPA selected the proposed TP and TN criteria based on the relationships with chlorophyll *a* described above. However, the MEI modeling results described in Section III.B(2)(b) also provide additional support for the TP criteria selection. The MEI predicted a 10% transparency loss when TP concentrations ranged from 0.053–0.098 mg/L in colored lakes (with one predicted value at 0.037 mg/L), from 0.038–0.068 mg/L in clear, alkaline lakes, and from 0.012–0.024 mg/L in clear, acidic lakes. All but one of these predicted values are within the lower and upper bounds of the proposed TP criteria. The MEI modeling results did not address TN.

(d) Proposed Criteria: Duration and Frequency

Numeric criteria include magnitude (*i.e.,* how much), duration (*i.e.,* how long), and frequency (*i.e.,* how often) components. Beginning with EPA's 2004 Integrated Report Guidance,[55] EPA has used the term "exceeding criteria" to refer to situations where all criteria components are not met. The term "digression" refers to an ambient level that goes beyond a level specified by the criterion-magnitude (*e.g.,* in a given grab sample). The term "excursion" refers to conditions that do not meet the criterion-magnitude and criterion-duration, in combination. A criterion-frequency specifies the maximum rate at which "excursions" may occur.

For the chlorophyll *a,* TN, and TP criteria for lakes, the criterion-magnitude values (expressed as a concentration) are provided in the table and the criterion-duration (or averaging period) is specified as annual. The criterion-frequency is no-more-than-once-in-a-three-year period. In addition, the long-term arithmetic average of annual geometric mean values shall not exceed the criterion-magnitude values (concentration values).

Appropriate duration and frequency components of criteria should be based on how the data used to derive the criteria were analyzed, and what the implications are for protection of designated uses given the effects of exposure at the specified criterion concentration for different periods of time and recurrence patterns. For lakes, the stressor-response relationship was based on annual geometric means for

[55] USEPA. Guidance for 2004 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d) and 305(b) of the Clean Water Act. *http://www.epa.gov/OWOW/tmdl/tmdl0103/Accessed* December 2009.

individual years at individual lakes. The appropriate duration period is therefore annual. The key question is whether this annual geometric mean needs to be met every year, or if some allowance for a particular year to exceed the applicable criterion could still be considered protective.

Data that contribute to the analysis of TSI, as well as data generated from supporting paleolimnological studies and MEI modeling, typically represent periods of time greater than a single year. Moreover, many of the models and analyses that form the basis of TSI results are designed to represent the "steady-state," or long-term stable water quality conditions. However, researchers have suggested caution in applying steady-state assumptions to lakes with long residence times.[56] In other words, the effects of spikes in annual loading could linger and disrupt the steady-state in some lakes. As a result, EPA is proposing two expressions of allowable frequency, both of which are to be met. First, EPA proposes a no-more-than-one-in-three-years excursion frequency for the annual geometric mean criteria for lakes. Second, EPA proposes that the long-term arithmetic average of annual geometric means not exceed the criterion-magnitude concentration. EPA anticipates that Florida will use its standard assessment periods as specified in Rule 62–303, F.A.C. (Impaired Waters Rule) to implement this second provision. These selected frequency and duration components recognize that hydrological variability will produce variability in nutrient regimes, and individual measurements may exceed the criteria magnitude concentrations. Furthermore, they balance the representation of underlying data and analyses based on the central tendency of many years of data (*i.e.,* the long-term average component) with the need to exercise some caution to ensure that lakes have sufficient time to process individual years of elevated nutrient levels and avoid the possibility of cumulative and chronic effects (*i.e.,* the no-more-than-one-in-three-year component). More information on this specific topic is provided in EPA's TSD for Florida's Inland Waters, Chapter 1: Methodology for Deriving U.S. EPA's Proposed Criteria for Lakes.

EPA requests comment on these proposed criteria duration and frequency expressions, and the basis for their derivation. EPA notes that some scientists and resource managers have suggested that nutrient criteria duration and frequency expressions should be more restrictive to avoid seasonal or annual "spikes" from which the aquatic system cannot easily recover, whereas others have suggested that criteria expressed as simply a long-term average of annual geometric means, consistent with data used in criteria derivation, would still be protective. EPA also requests comment on any alternative duration and frequency expressions that might be considered protective, including (1) a criterion-duration expressed as a monthly average or geometric mean, (2) a criterion-frequency expressed as meeting allowable magnitude and duration every year, (3) a criterion-frequency expressed as meeting allowable magnitude and duration in more than half the years of a given assessment period, and (4) a criterion-frequency expressed as meeting allowable magnitude and duration as a long-term average only. EPA further requests comment on whether an expression of the criteria in terms of an arithmetic average of annual geometric mean values based on rolling three-year periods of time would also be protective of the designated use.

(e) Application of Lake-Specific, Ambient Condition-Based Modified TP and TN Criteria

As described in Section III.B(2)(c), EPA is proposing a framework that uses both the upper and lower bounds of the 50th percentile prediction interval to allow the derivation of modified TP and TN lake-specific criteria to account for the natural variability in the relationship between chlorophyll *a* and TP and TN that may exist in certain lakes. The proposed rule would allow FDEP to calculate ambient modified criteria for TN and TP based on at least three years of ambient monitoring data with (a) at least four measurements per year and (b) at least one measurement between May and September and one measurement between October and April each year. If a calculated modified TN and TP criterion is below the lower value, then the lower value is the criteria. If a calculated modified TN and TP criterion is above the upper value, then the upper bound is the criteria. Calculated modified TP and TN values may not exceed criteria applicable to streams to which a lake discharges.

EPA's proposed rule provides that FDEP must document these modified criteria and establish them in a manner that clearly recognizes their status as the applicable criterion for a particular lake so that the public and all regulatory authorities are aware of its existence. However, EPA's proposed rule does not require that FDEP go through a formal SSAC process subject to EPA review and approval. (For more information on the SSAC process, please refer to Section V of this proposal). EPA believes such modified criteria do not need to go through the SSAC process because the conditions under which they are applicable are clearly stated in the proposed rule and the methods of calculation are clearly laid out so that the outcome is predictable and transparent. By providing a specific process for deriving modified criteria within the WQS rule itself, each individual outcome of this process is an effective WQS for CWA purposes and does not need separate approval by EPA.

One technical concern is the extent to which the variability in the data relating chlorophyll *a* levels to TN and TP levels truly reflects differences between lakes, as opposed to temporal differences in the conditions in the same lake. To address this issue, EPA verified that the observed variability in the supporting analysis was indeed predominantly "across lake" variability, not "within lake" variability.

Another technical concern is that there may be a time lag between the presence of high nutrients and the biological response. In a study of numerous lakes, researchers found that there was often a lag period of a few years in chlorophyll *a* response to changes in nutrient loading, but that there was correlation between chlorophyll *a* and nutrient concentrations on an annual basis.[57] The difference between nutrient loading and nutrient concentration as a function of time is related to the hydraulic retention time of a lake. EPA proposed TN and TP criteria as concentration values with an annual averaging period, so any time lag in response would not be expected to confound the derivation of modified criteria. Furthermore, EPA is proposing to require three years worth of data, which would reflect any short time lag in response.

A third technical concern is the presence of temporary or long-term site-specific factors that may suppress biological response, such as the presence of grazing zooplankton, excess sedimentation that blocks light penetration, extensive canopy cover, or seasonal herbicide use that impedes proliferation of algae. If any of these suppressing factors are removed, then nutrient levels may result in a spike in algal production above protective levels.

[56] Kenney (1998) as reported in Salas and Martino (1991).

[57] Jeppeson *et al.* 2005. Lake responses to reduced nutrient loading—an analysis of contemporary long-term data from 35 case studies. *Freshwater Biology* 50: 1747–1771.

EPA is proposing to require that the ambient calculation for modified TP and TN criteria be based on at least a three-year record of observation, and be based on representative sampling (*i.e.,* four samples per year with at least one between May and September and one between October and April) during each year. These requirements will minimize the influence of long-term site-specific factors and ensure longer-term stable conditions. EPA selected three years as a reasonable minimum length of time to appropriately account for anomalous conditions in any given year that could lead to erroneous conclusions regarding the true relationship between nutrient levels in a lake and chlorophyll *a* levels. EPA anticipates that the State would use all recent consecutive years of data on record (*i.e.,* it would not be appropriate to select three random years within a complete record over the past seven years). EPA is requiring four measurements within a year to provide seasonal representation (*i.e.,* May–September and October–April). Providing seasonal representation is important because nutrient levels can vary by season. In addition, this minimum sample size is conducive to the derivation of central tendency measurements, such as a geometric mean, with an acceptable degree of confidence. EPA is proposing that the chlorophyll *a* criterion must be met in each of the three or more years of ambient monitoring that define the record of observation for the lake to be eligible for the ambient calculation modified provision for TN and TP. EPA requests comment on whether three years of data is sufficient to establish for a particular lake that there is a fundamentally different relationship between chlorophyll *a* levels and TN and TP levels. EPA also requests comment on whether less data or a different specification would be sufficient to establish this different relationship in a particular lake, *e.g.* whether revised TN and TP ambient criteria should be allowed when the chlorophyll *a* criterion concentration has been exceeded once in three years.

Application of the ambient calculation provision has implications for assessment and permitting because the outcome of applying this provision is to establish alternate numeric TN and TP values as the applicable numeric nutrient criteria for TN and TP. For accountability and tracking purposes, the State would need to document in a publicly available and accessible manner, such as on an official State Web site, the result of the ambient calculation for any given lake. The State may wish to issue a public notification, with an opportunity to submit additional data and check calculations, to ensure an appropriate value is determined. The State may wish to publicly certify the outcome via a Secretarial order or some other official statement of intent and applicability. EPA's preference is that once modified criteria are developed, they remain the applicable criteria for the long-term. The State has the flexibility to revise the criteria, but the expectation is that they will not be a continuously moving target for implementation purposes. As an example of how the lakes criteria might work in practice, consider a colored lake which meets the chlorophyll *a* criterion. If FDEP established a modified TP criterion of 0.110 mg/L and subsequent monitoring showed levels at 0.136 mg/L, that lake would not be considered attaining the applicable criteria for CWA purposes (unless the State goes through the process of establishing a revised modified criterion).

The permitting authority would use publicly certified modified TN or TP criteria to develop water quality-based effluent limits (WQBELs) that derive from and comply with applicable WQS. In this application, the permit writer would use the modified ambient criterion, computed as described above, as the basis for any reasonable potential analysis or permit limit derivation. In this case, as in any other case, EPA expects the details to be fully documented in the permit fact sheet.

This type of ambient calculation provision based on meeting response criteria applicable to the assessed water may not be appropriate when the established TN and TP criteria are serving to maintain and protect waters downstream. To address this concern, EPA proposes that calculated TP and TN values in a lake that discharges to a stream may not exceed criteria applicable to the stream to which a lake discharges. EPA requests comment on this provision.

(3) Request for Comment and Data on Proposed Approach

EPA is soliciting comment on the approaches described in this proposal, the data underlying those approaches, and the proposed criteria. EPA will evaluate all data and information submitted by the close of the public comment period for this rulemaking with regard to nutrient criteria for Florida's lakes. For the application of the modified ambient calculation provision, EPA is seeking comment on allowing the calculation to occur one time only, based on an adequate period of record, and then holding that value as the protective TP or TN criteria for future assessment and implementation purposes. EPA is also seeking comment on whether to require an ambient chlorophyll *a* level demonstrated to be below the chlorophyll *a* threshold criterion for at least three years become the protective chlorophyll *a* criterion for a lake subject to the modified ambient calculation provision (*i.e.,* whether to require a more stringent chlorophyll *a* criterion if three years of data show that the more stringent level reflects current conditions in the lake). EPA also requests comment on whether an additional condition for being able to apply a modified criterion include continued ambient monitoring and verification that chlorophyll *a* levels remain below the protective criterion. EPA could specify that modified criteria remain in effect as long as FDEP subsequently conducts monthly (or some other periodic) monitoring of the lake to ensure that chlorophyll *a* levels continue to meet the protective criterion. If this monitoring is not conducted and documented, EPA could specify that the baseline criterion would become the applicable criterion. Among others, this provision may address concerns about whether the modified criterion adequately represents long-term hydrologic variability. Finally, EPA requests comment on the appropriate procedure for documenting and tracking the results of modified criteria that allows transparency, public access, and accountability.

(4) Alternatives Considered by EPA

During EPA's review of the available data and information for development of numeric nutrient criteria for Florida's lakes, EPA considered and is soliciting comment on an alternative approach to deriving lakes criteria from the statistical correlation plots and regression analysis. The alternative approach would use either the central tendency values or the lower values associated with the 50th percentile prediction interval for TN and TP criteria and would not include the framework to calculate modified TP and TN criteria when the chlorophyll *a* criterion is met. EPA is also seeking comments on the following two supplementary modifications that EPA considered but did not include in this proposal: (1) the use of a modified categorization of lakes in Florida; and (2) the addition of upper percentile criteria with a different exceedance frequency.

(a) Single Value Approach To Derive Lakes Criteria—Derive TN and TP Criteria Using Correlations Associated With the Regression Line or Lower Value of the 50th Percentile Prediction Interval

One alternative means of selecting TN and TP criteria is to use the regression line (central tendency) to calculate TP and TN concentrations that correlate to the proposed chlorophyll *a* criteria for each lake class. A second alternative is to use the lower value of the 50th percentile prediction interval to calculate TP and TN concentrations. Establishing TP and TN criteria using the central tendency of the regression line represents the best estimate of TN and TP associated with a protective chlorophyll *a* criterion across all lakes, but carries some risk of being overprotective for some individual lakes and under-protective for others because of the demonstrated variability of the data. On the other hand, establishing TP and TN criteria using the lower value of the 50th percentile prediction interval will likely be protective in most cases, but could be overprotective for a greater number of lakes because the data demonstrate that many lakes achieve the protective chlorophyll *a* criterion with higher levels of TN and TP. Neither approach accounts for lake-specific natural variability, apart from that accounted for by color and alkalinity classification. However, the correlated TP and TN concentrations within each lake class at these alternative statistical boundaries would result in single criteria values for TN and TP, which is an approach that water quality program managers will have more familiarity. EPA's rationale for proposing a framework that uses both the upper and lower values of the 50th percentile prediction interval to allow the derivation of modified TN and TP lake-specific criteria rather than either of these single values was to account for the natural variability in the relationship between chlorophyll *a* and TN and TP that may exist in lakes. EPA solicits comment, however, on this alternative approach of using single values for TN and TP criteria in Florida's lakes.

(b) Modification to Proposed Lakes Classification

As discussed in Section III.B(2)(a), EPA used available data to determine a classification scheme for Florida's lakes, based on a color threshold of 40 PCU and a threshold of 50 mg/L alkalinity as $CaCO_3$. In its July 2009 numeric nutrient criteria proposal, Florida considered a similar classification approach based on color and alkalinity but proposed a chlorophyll *a* criterion of 9 µg/L to protect aquatic life in clear, acidic lakes. As discussed above, EPA believes that the scientific evidence more strongly supports a chlorophyll *a* criterion of 6 µg/L to protect Florida's clear, acidic lakes that include the very oligotrophic lakes found in Florida's sandhills, principally in three areas: the Newhope Ridge/Greenhead slope north of Panama City (locally called the Sandhill Lakes region); the Norfleet/Springhill Ridge just west of Tallahassee, and Trail Ridge northeast of Gainesville.[58] However, some stakeholders have suggested that many lakes in the clear, acidic class (as currently defined) might be sufficiently protected with a chlorophyll *a* criterion of 9 µg/L. EPA believes the scientific basis for a 9 µg/L chlorophyll *a* value may be more applicable to clear acidic lakes other than those in Florida's sandhills (*i.e.,* other than those in the Sandhill Lakes region, the Norfleet/Springhill Ridge just west of Tallahassee and Trail Ridge northeast of Gainesville). To address this, EPA could separate clear, acidic lakes into two categories: one category for clear, acidic lakes in sandhill regions of Florida, and a second category for clear, acidic lakes in other areas of the State. EPA could assign the first category (clear, acidic sandhill lakes) a chlorophyll *a* criterion of 6 µg/L and the second category (clear, acidic non-sandhill lakes) a chlorophyll *a* criterion of 9 µg/L.

Alternatively, EPA could lower the defining alkalinity threshold to 20 mg/L $CaCO_3$ so that the clear, acidic lakes category would only include lakes with very acidic values and correspondingly low chlorophyll *a,* TN, and TP values. EPA's analysis of a distribution of alkalinity data from Florida's clear lakes found that lakes with alkalinity values $\geq$ 20 mg/L $CaCO_3$ had higher levels of nutrients and nutrient response parameters than lakes with alkalinity values < 20 mg/L $CaCO_3$. By adjusting the alkalinity threshold to 20 mg/L $CaCO_3$, EPA would be creating a smaller group of clear, acidic lakes that may be more representative of naturally more acidic, oligotrophic conditions than the proposed alkalinity threshold of 50 mg/L $CaCO_3$. EPA opted to propose a threshold of 50 mg/L $CaCO_3$ because it represents a more comprehensive group of lakes that may be naturally oligotrophic (*i.e.,* ensures protection where there may be some uncertainty). EPA solicits comment on these alternative approaches to classifying Florida's lakes. EPA also notes, as discussed previously, that FDEP recommended a criterion of 9 µg/L as being protective of all clear acidic lakes, including sandhill lakes and that the Nutrient Criteria TAC supported "less than 10 µg/L" as protective. EPA also requests comment on 9 µg/L chlorophyll *a* as being protective of all clear acidic lakes, including sandhill lakes.

(c) Modification To Include Upper Percentile Criteria

EPA is considering promulgating upper percentile criteria for chlorophyll *a,* TN, and TP in colored, clear alkaline, and clear acidic lakes to provide additional aquatic life protection. Accordingly, EPA could add that the instantaneous concentration in the lake not surpass these criterion-magnitude concentrations more than 10% of the time (criterion-duration: instant; criterion-frequency: 10% of the time). EPA derived example upper percentile criteria using the observed standard deviation from the mean of lake samples meeting the respective criteria (lower values of the TN and TP ranges) within each lake class. Using this example, the calculated criteria-magnitude concentrations for chlorophyll *a,* TN, and TP respectively by lake class are: 63 µg/L, 1.5 mg/L and 0.09 mg/L for colored lakes; 48 µg/L, 1.8 mg/L and 0.05 mg/L for clear, alkaline lakes; and 15 µg/L, 0.6 mg/L and 0.02 mg/L for clear, acidic lakes.

These criteria would provide the means to protect lakes from episodic events that increase loadings for significant periods of time during the year, but are balanced out by lower levels in other parts of the year such that the annual geometric mean value is met. EPA chose not to propose such criteria because of the significant variability of chlorophyll *a,* TN, and TP, the variety of other factors that may influence levels of these parameters in the short-term, and that significant environmental damage from eutrophication is more likely when levels are elevated for longer periods of time. However, EPA solicits comment on this additional approach of promulgating upper percentile criteria for chlorophyll *a,* TN, and TP.

(5) Request for Comment and Data on Alternative Approaches

EPA is soliciting comment on the Agency's proposed approach, as well as the alternative approach to deriving numeric nutrient criteria for Florida's lakes and the supplemental modifications as described in Section III.B(4). EPA will evaluate all data and

[58] Griffith, G.E., D.E. Canfield, Jr., C.A. Horsburgh, J.M. Omernik, and S.H. Azevedo. 1997. Florida lake regions. U.S. EPA, Corvallis, OR. *http://www.epa.gov/wed/pages/ecoregions/fl_eco.htm.*

information submitted by the close of the public comment period for this rulemaking with regard to nutrient criteria for Florida's lakes.

C. Proposed Numeric Nutrient Criteria for the State of Florida's Rivers and Streams

(1) Proposed Numeric Nutrient Criteria for Rivers and Streams

EPA is proposing numeric nutrient criteria for TN and TP in four geographically distinct watershed regions of Florida's rivers and streams (hereafter, streams) classified as Class I or III waters under Florida law (Rule 62–302.400, F.A.C.).

Nutrient watershed region	Instream protection value criteria	
	TN (mg/L) [a]	TP (mg/L) [a]
Panhandle [b]	0.824	0.043
Bone Valley [c]	1.798	0.739
Peninsula [d]	1.205	0.107
North Central [e]	1.479	0.359

[a] Concentration values are based on annual geometric mean not to be surpassed more than once in a three-year period. In addition, the long-term average of annual geometric mean values shall not surpass the listed concentration values. (Duration = annual; Frequency = not to be surpassed more than once in a three-year period or as a long-term average).

[b] Panhandle region includes the following watersheds: Perdido Bay Watershed, Pensacola Bay Watershed, Choctawhatchee Bay Watershed, St. Andrew Bay Watershed, Apalachicola Bay Watershed, Apalachee Bay Watershed, and Econfina/Steinhatchee Coastal Drainage Area.

[c] Bone Valley region includes the following watersheds: Tampa Bay Watershed, Sarasota Bay Watershed, and Charlotte Harbor Watershed.

[d] Peninsula region includes the following watersheds: Waccasassa Coastal Drainage Area, Withlacoochee Coastal Drainage Area, Crystal/Pithlachascotee Coastal Drainage Area, Indian River Watershed, Caloosahatchee River Watershed, St. Lucie Watershed, Kissimmee River Watershed, St. John's River Watershed, Daytona/St. Augustine Coastal Drainage Area, Nassau Coastal Drainage Area, and St. Mary's River Watershed.

[e] North Central region includes the Suwannee River Watershed.

The following section describes the methodology used to derive the proposed numeric nutrient criteria for streams. EPA is soliciting comments and scientific data and information regarding these proposed criteria and their derivation.

(2) Methodology for Deriving EPA's Proposed Criteria for Streams

Like other aquatic ecosystems, excess nutrients in streams increases vegetative growth (plants and algae), and changes the assemblage of plant and algal species present in the system. These changes can affect the organisms that are consumers of algae and plants in many ways. For example, these changes can alter the available food resources by providing more dead plant material versus live plant material, or providing algae with a different cell size for filter feeders. These changes can also alter the habitat structure by covering the stream or river bed with periphyton (attached algae) rather than submerged aquatic plants, or clogging the water column with phytoplankton (floating algae). In addition, these changes can lead to the production of algal toxins that can be toxic to fish, invertebrates, and humans. Chemical characteristics of the water, such as pH and concentrations of dissolved oxygen, can also be affected by excess nutrients. Each of these changes can, in turn, lead to other changes in the stream community and, ultimately, to the stream ecology that supports the overall function of the linked aquatic ecosystem.

Although the general types of adverse effects can be described, not all of these effects will occur in every stream at all times. For example, some streams are well shaded, which would tend to reduce the near-field effect of excess nutrients on primary production because light, which is essential for plant or algae growth, does not reach the water surface. Some streams are fast moving and pulses of nutrients are swiftly carried away before any effect can be observed. However, if the same stream widens and slows downstream or the canopy that provided shading opens up, then the nutrients present may accelerate plant and algal biomass production. As another example, the material on the bottom of some streams, referred to as substrate, is frequently scoured from intense rain storms. These streams may lack a natural grazing community to consume excess plant growth and may be susceptible to phytoplankton algae blooms during periods when water velocity is slower and water residence time is longer. The effects of excess nutrients may be subtle or dramatic, easily captured by measures of plant and algal response (such as chlorophyll *a*) or not, and may occur in some locations along a stream but not others.

Notwithstanding natural environmental variability, there are well understood and documented analyses and principles about the underlying biological effects of TN and TP on an aquatic ecosystem. There is a substantial and compelling scientific basis for the conclusion that excess TN and TP will have adverse effects; however, it is often unclear where precisely the impacts will occur. The value of regional numeric nutrient criteria for streams is that the substantial expenditure of time and scarce public resources to document and interpret inevitable and expected stream variability on a site-by-site, segment-by-segment basis (*i.e.,* as in the course of interpreting a narrative WQS for WQBELs and TMDL estimations) is no longer necessary. Rather, regional numeric nutrient criteria for streams allows an expedited and expanded level of aquatic protection across watersheds and greatly strengthens local and regional capacity to support and maintain State designated uses throughout aquatic ecosystems. In terms of environmental outcomes, the result is a framework of expectations and standards that is able to extend the protection needed to restore and maintain valuable aquatic resources to entire watersheds and associated aquatic ecosystems. At the same time, the ability to promulgate SSAC, as well as other flexibilities discussed in this proposal, allows the State to continue to address water bodies where substantial data and analyses show that the regional criteria may be either more stringent than necessary or not stringent enough to protect designated uses.

As mentioned earlier, to effectively apply this well understood and documented science, EPA has recommended that nutrient criteria

include both causal (*e.g.,* TN and TP) and response variables (*e.g.,* chlorophyll *a* and some measure of clarity) for water bodies.[59] EPA recommends causal variables, in part, to have the means to develop source control targets and, in part, to have the means to assess stream condition with knowledge that responses can be variable, suppressed, delayed, or expressed at different locations. EPA recommends response variables, in part, to have a means to assess stream condition that synthesizes the effect of causal variables over time, recognizing the daily, seasonal, and annual variability in measured nutrient levels.[60]

The ability to establish protective criteria for both causal and response variables depends on available data and scientific approaches to evaluate these data. Whereas, there are data available for water column chlorophyll *a* (phytoplankton) and algal thickness on various substrates (periphyton) for certain types of streams in Florida, there are currently no available approaches to interpret these data to infer scientifically supported thresholds for these nutrient-specific response variables in Florida streams. Additionally, in previously published guidance,[61] EPA has recommended water clarity as a response variable for numeric nutrient criteria because algal density in a water column results in turbidity, and thus a related decrease in water clarity can serve as an indicator of excess algal growth. For water clarity, Florida has criteria for transparency and turbidity, applicable to all Class I and III waters, expressed in terms of a measurable deviation from natural background (32–302.530(67) and (69), F.A.C.). Therefore, EPA is not proposing criteria for any response variable in Florida's streams at this time, however, EPA will consider additional data that becomes available during the comment period. One approach for deriving criteria for water quality variables such as a measure for water clarity or chlorophyll *a,* could be to apply a statistical distribution approach to a population of streams for each of the proposed NWRs. This approach is further described in previous EPA guidance.[62]

For Florida streams, EPA has determined that there are sufficient available data on TN and TP concentrations with corresponding information on biological condition for a wide variety of stream types that can be used to derive numeric nutrient criteria for those causal variables. EPA used multiple measures of stream condition (or metrics) that describe the biological condition of the benthic invertebrate community. EPA then coupled the stream condition metrics with associated measurements of TN and TP concentrations to provide the basis for deriving causal variable numeric nutrient criteria.

EPA's proposed instream numeric nutrient criteria for Florida's streams are based upon EPA's evaluation of data on TN and TP levels in rivers and streams that have been carefully evaluated by FDEP, and subsequently by EPA, on a site-specific basis and identified as biologically healthy. EPA's approach results in numeric criteria that are protective of the streams themselves. EPA has determined, however, that these instream values may not always be protective of the designated uses in downstream lakes and estuaries. Therefore, EPA has also developed an approach for deriving TN and TP values for rivers and streams to ensure the protection of downstream lakes and estuaries. This approach is discussed in Section III.C(6).

(a) Methodology for Stream Classification: EPA's Nutrient Watershed Regions (NWRs)

EPA classified Florida's streams north of Lake Okeechobee by separating watersheds with a substantially different ratio of TN and TP export into Nutrient Watershed Regions (NWR). The resulting regions reflect the inherent differences in the natural factors that contribute to nutrient concentrations in streams (*e.g.,* geology, soil composition, and/or hydrology). Reliance on a watershed-based classification approach reflects the understanding that upstream water quality affects downstream water quality. This watershed classification also facilitates the ability to address the effects of TN and TP from streams to downstream lakes or estuaries in the same watershed.

EPA's classification approach results in four watershed regions: the Panhandle, the Bone Valley, the Peninsula, and the North Central (for a map of these regions, refer to the EPA TSD for Florida's Inland Waters or the list of watersheds in the table above). These four regions do not include the south Florida region (corresponding to FDEP's Everglades Bioregion) that is addressed separately in Section III.E which sets out EPA's proposed numeric nutrient criteria for canals in south Florida. All flowing waters in this region are either a canal or a wetland.

When classifying Florida's streams, EPA identified geographic areas of the State as having phosphorus-rich soils and geology, such as the Bone Valley and the northern Suwannee River watershed. As indicated above, the Bone Valley region and the Suwannee River watersheds are classified in this proposal as separate NWRs because it is well established that the naturally phosphorus-rich soils in these areas significantly influence stream phosphorus concentrations in these watersheds. EPA would expect from a general ecological standpoint that the associated aquatic life uses, under these naturally-occurring, nutrient-rich conditions, would be supported. The Agency requests comment on this particular classification decision (regions based on phosphorus-rich soils), as well as an alternate classification approach that would not separate out the phosphorus-rich watersheds described in this notice. The latter approach is similar to the approach proposed by EPA, but would not result in separate NWRs for the Bone Valley and/or North Central. Rather these NWRs would be integrated within the other NWRs.

(b) The Use of the Stream Condition Index as an Indicator of Biologically Healthy Conditions

For EPA's proposed approach, the Agency utilized a multi-metric index of benthic macroinvertebrate community composition and taxonomic data known as the Stream Condition Index (SCI) developed by FDEP to assess the

[59] U.S. EPA. 1998. National Strategy for the Development of Regional Nutrient Criteria. Office of Water, Washington, DC. EPA 822–R–98–002; Grubbs, G. 2001. U.S. EPA. (Memorandum to Directors of State Water Programs, Directors of Great Water Body Programs, Directors of Authorized Tribal Water Quality Standards Programs and State and Interstate Water Pollution Control Administrators on Development and Adoption of Nutrient Criteria into Water Quality Standards. November 14, 2001); Grumbles, B.H. 2007. U.S. EPA. (Memorandum to Directors of State Water Programs, Directors of Great Water Body Programs, Directors of Authorized Tribal Water Quality Standards Programs and State and Interstate Water Pollution Control Administrators on Nutrient Pollution and Numeric Water Quality Standards. May 25, 2007).

[60] U.S. EPA. 2000. Nutrient Criteria Technical Guidance Manual: Rivers and Streams. Office of Water, Washington, DC. EPA–822–B–00–002.

[61] U.S. EPA. 2000. Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs. Office of Water, Washington, DC. EPA–822–B–00–001; U.S. EPA. 2000. Nutrient Criteria Technical Guidance Manual: Rivers and Streams. Office of Water, Washington, DC. EPA–822–B–00–002; U.S. EPA. 2001. Nutrient Criteria Technical Manual: Estuarine and Coastal Marine Waters. Office of Water, Washington, DC. EPA–822–B–01–003.

[62] U.S. EPA. 2000. Nutrient Criteria Technical Guidance Manual: Rivers and Streams. Office of Water. 4304. EPA–822–B–00–002.

biological health of Florida's streams.[63] Of the metrics that comprise the SCI, some decrease in response to human disturbance-based stressors, such as excess nutrients; for example, (1) total taxa richness, (2) richness of Ephemeroptera (mayflies), (3) richness of Plecoptera (stoneflies), (4) percentage of sensitive taxa, and (5) percentage of filterers and suspension feeders. Other metrics increase in response to human disturbance-based stressors; for example, percent of very tolerant taxa (*e.g.,* Genera *Prostoma, Lumbriculus*) and percent of the dominant taxa (*i.e.,* numerical abundance of the most dominant taxon divided by the total abundance of all taxa).

The SCI was developed by FDEP in 2004, with subsequent revisions in 2007 to reduce the variability of results. In order to ensure that data are produced with the highest quality, field biologists and lab technicians must follow detailed Standard Operating Procedures (SOPs) and additional guidance for sampling and data use provided through a FDEP document entitled "Sampling and Use of the Stream Condition Index (SCI) for Assessing Flowing Waters: A Primer (DEP–SAS–001/09)." Field biologists must pass a rigorous audit with FDEP, and laboratory taxonomists are regularly tested and must maintain greater than 95% identification accuracy.

EPA considered two lines of evidence in determining the SCI range of scores that would indicate biologically healthy systems. The first line of evidence was an evaluation of SCI scores in streams considered by FDEP to be least-disturbed streams in Florida. A statistical analysis balanced the probability of a stream being included in this reference set with the probability of a stream not being included in this reference set, and indicated that an SCI score of 40 was an appropriate threshold. SCI scores range from 1 to 100 with higher scores indicating healthier biology.

A second line of evidence was the result of an expert workshop convened by FDEP in October 2006. The workshop included scientists with specific knowledge and expertise in stream macroinvertebrates. These experts were asked to individually and collectively evaluate a range of SCI data (*i.e.,* macroinvertebrate composition and taxonomic data) and then assign those data into one of the six Biological Condition Gradient (BCG)[64] categories, ranging from highly disturbed (Category 6) to pristine (Category 1). EPA analyzed the results of these categorical assignments using a proportional odds regression model[65] that predicts the probability of an SCI score occurring within one of the BCG categories by overlapping the ranges of SCI scores associated with each category from the individual expert assignment. The results of the analysis provided support for identifying a range of SCI scores that minimized the probability of incorrectly assigning a low quality site to a high quality category, and incorrectly assigning a high quality site to a low quality category, using the collective judgment of expert opinion. The results indicated a range of SCI scores of 40–44 to represent an appropriate threshold of healthy biological condition. Please refer to the EPA TSD for Florida's Inland Waters for more information on such topics as EPA's estimates of the Type I and Type II error associated with various threshold values. Thus, two very different approaches yielded comparable results. A subsequent EPA statistical analysis indicated that nutrient conditions in Florida streams within different regions remain essentially constant within an SCI score range of 40–50 providing further support for a selection of 40 as a threshold that is sufficiently protective for this application. The resulting TN and TP concentrations associated with a SCI score of 40 versus 50 did not represent a statistical difference and 40 was more in line with other lines of evidence for a SCI score threshold.

(c) Methodology for Calculating Instream Protection Values: The Nutrient Watershed Region Distribution Approach

EPA evaluated several methodologies, including reference conditions and stressor-response relationships, to develop values that protect designated uses of Florida streams instream. EPA analyzed stressor-response relationships in Florida streams based on available data, but, as mentioned above, did not find sufficient scientific support for their use in the derivation of numeric nutrient criteria for Florida streams. More specifically, EPA was not able to demonstrate a sufficiently strong correlation between the biological response indicators (*e.g.,* chlorophyll *a,* periphyton biomass, or SCI) and TN or TP concentrations. Thus, the Agency could not confidently predict a specific biological response (such as an SCI score) for an individual stream solely from the associated stream measurements of TN or TP concentrations.

There may be several reasons why empirical relationships between field-derived data of nutrient stressor and biological response variables show a relatively weak correlation. First, the relationship between nutrient concentrations and a biological response, such as algal growth, can be confounded by the presence of other stressors. For example, other stressors, such as excessive scour could cause low benthic invertebrate diversity, as measured by the SCI, even where nutrients are low. Excessive scour could also suppress a biological response (such as chlorophyll *a* or periphyton biomass) when nutrients are high. Another reason for stressor-response relationships with low correlations is that algal biomass accumulation is difficult to characterize because dynamic conditions in an individual stream can allow algae to accumulate and be removed rapidly, which is difficult to capture with periodic monitoring programs.

As an alternative to the stressor-response approach, EPA analyzed the TN and TP concentrations associated with a healthy biological condition in streams, and examined the statistical distributions of these data in order to identify an appropriate threshold for providing protection of aquatic life designated uses. To derive the instream protection values under this approach, EPA first assembled the available nutrient concentrations and biological response data for streams in Florida. EPA used FDEP's data from the IWR and STORET[66] databases and identified sites where SCI scores were 40 and higher. EPA further screened these sites by cross-referencing them with Florida's CWA section 303(d) list for Florida and excluded sites with identified nutrient impairments or dissolved oxygen impairments associated with elevated nutrients. EPA grouped the remaining sites (hereafter, biologically healthy sites) according to its nutrient watershed regions (Panhandle, Bone Valley, Peninsula, and North Central). For each nutrient watershed region, EPA compiled nutrient data (TN and TP

[63] The SCI method was developed and calibrated by FDEP. See "Fore et al. 2007. Development and testing biomonitoring tools for macroinvertebrates in Florida streams (Stream Condition Index and BioRecon). Final report to Florida Department of Environmental Protection" and the EPA TSD for Florida's Inland Waters for more information on the SCI.

[64] Appendix H in "Fore et al. 2007. Development and testing biomonitoring tools for macroinvertebrates in Florida streams (Stream Condition Index and BioRecon). Final report to Florida Department of Environmental Protection".

[65] See the EPA TSD for Florida's Inland Waters for more information on the proportional odds regression model.

[66] FL IWR and STORET can be found at: *http://www.dep.state.fl.us/WATER/STORET/INDEX.HTM.*

concentrations) associated with the biologically healthy sites, and calculated distributional statistics for annual average TN and TP concentrations.

The second step in deriving instream protection values was to further characterize the distribution of TN and TP among biologically healthy sites. Specifically, EPA calculated the number of biologically healthy sites within integer log-scale ranges of TN and TP concentrations, as well as the cumulative distribution. These nutrient distributions from biologically healthy sites in each nutrient watershed region are represented on a log-scale because concentration data are typically log-normally distributed. A log-normal distribution is skewed, with a mode near the geometric mean rather than the arithmetic mean.

The third step in deriving instream protection values was to determine appropriate thresholds from these distributions for providing protection of aquatic life designated uses. Selection of a central tendency of the distribution (*i.e.,* the median or geometric mean of a log-normal distribution) would imply that half of the biologically healthy sites are not attaining their uses. In contrast, an extreme upper end of the distribution (*e.g.,* the 90th or 95th percentile) may be the most likely to be heavily influenced by extreme event factors that are not representative of typically biologically healthy sites. This might be the case because the upper tail of the distribution might reflect a high loading year (landscape and/or atmospheric), and/or lack of nutrient uptake by algae (in turn due to a myriad of physical and biological factors like scour, grazing, light limitation, other pollutants). Thus, this tail of the distribution may just represent the most nutrient "tolerant" among the sites. Another possibility is that these streams may experience adverse effects from nutrient enrichment that are not yet reflected in the SCI score. A reasonable choice for a threshold is one which lies just above the vast majority of the population of healthy streams. This choice is reasonable because it reflects a point where most biologically healthy sites will still be identified as attaining uses, but avoids extrapolations into areas of the distribution characterized by only a few data points (as would be the case for the 90th or 95th percentile). When a threshold is established as a water quality criterion, sites well below that threshold might be allowed to experience an increase in nutrient levels up to the threshold level. There is little assurance that biologically healthy sites with nutrient concentrations well below the 90th or 95th percentile would remain biologically healthy if nutrient concentrations increased to those levels because relatively few sites with nutrient concentrations as high as those at the 90th or 95th percentile are demonstrated to be biologically healthy.

The range between the 25th and 75th percentiles, or inter-quartile range, is a common descriptive statistic used to characterize a distribution of values. For example, statistical software packages typically include the capability to display distributions as "box and whisker" plots, which very prominently identify the inter-quartile range. The inter-quartile range of a log normal distribution spans a smaller range of values than the inter-quartile range of a distribution of the data evenly spread across the entire range of values. This means that the further a value goes past the 75th percentile of a log normal distribution, the less representative it is of the majority of data (in this case, less representative of biologically healthy sites). Within the inter-quartile range of a log normal distribution, the slope of the cumulative frequency distribution will be the greatest. The 75th percentile represents a reasonable upper bound of where there is the greatest confidence that biologically healthy sites will be represented. Beyond the inter-quartile range (*i.e.,* below the 25th percentile and above the 75th percentile), there is a greater chance that measurements may represent anomalies that would not correspond to long-term healthy conditions in the majority of streams. Based on this analysis, EPA concluded that the 75th percentile represents an appropriate and well-founded protective threshold derived from a distribution of nutrient concentrations from biologically healthy sites. EPA solicits comment on its analysis of what constitutes a protective threshold.

(d) Proposed Criteria: Duration and Frequency

Aquatic life water quality criteria contain three components: Magnitude, duration, and frequency. For the TN and TP numeric criteria for streams, the derivation of the criterion-magnitude values is described above and these values are provided in the table in Section III.C(1). The criterion-duration of this magnitude is specified in *footnote a* of the streams criteria table as an annual geometric mean. EPA is proposing two expressions of allowable frequency, both of which are to be met. First, EPA proposes a no-more-than-one-in-three-years excursion frequency for the annual geometric mean criteria for lakes. Second, EPA proposes that the long-term arithmetic average of annual geometric means not to exceed the criterion-magnitude concentration. EPA anticipates that Florida will use their standard assessment periods as specified in Rule 62–303, F.A.C. (Impaired Waters Rule) to implement this second provision. These proposed duration and frequency components of the criteria are consistent with the data set used to derive these criteria, which applied distributional statistics to measures of annual geometric mean values from multiple years of record. EPA has determined that this frequency of excursions will not result in unacceptable effects on aquatic life as it will allow the stream ecosystem enough time to recover from an occasionally elevated year of nutrient loadings. The Agency requests comment on these proposed duration and frequency components of the stream numeric nutrient criteria.

EPA notes that some scientists and resource managers have suggested that nutrient criteria duration and frequency expressions should be more restrictive to avoid seasonal or annual "spikes" from which the aquatic system cannot easily recover, whereas others have suggested that criteria expressed as simply a long-term average of annual geometric means, consistent with data used in criteria derivation, and would still be protective. EPA requests comment on alternative duration and frequency expressions that might be considered protective, including (1) a criterion-duration expressed as a monthly average or geometric mean, (2) a criterion-frequency expressed as meeting allowable magnitude and duration every year, (3) a criterion-frequency expressed as meeting allowable magnitude and duration in more than half the years of a given assessment period, and (4) a criterion-frequency expressed as meeting allowable magnitude and duration as a long-term average only. EPA further requests comment on whether an expression of the criteria in terms of an arithmetic average of annual geometric mean values based on rolling three-year periods of time would also be protective of the designated use.

(3) Request for Comment and Data on Proposed Approach

EPA is soliciting comments on the approaches taken by the Agency to derive these proposed criteria, the data underlying those approaches, and the proposed criteria specifically. EPA is requesting that the public submit any other scientific data and information that may be available related to nutrient concentrations and associated biological responses in Florida's streams. EPA is

soliciting comment specifically on the selection of criteria parameters for TN and TP; the proposed classification of streams into four regions based on aggregated watersheds; and the conclusion that the proposed criteria for streams are protective of designated uses and adequately account for the spatial and temporal variability of nutrients. In addition, EPA requests comment on folding the Suwannee River watershed in north central Florida into the larger Peninsula NWR (*i.e.,* not having a separate North Central region) or, alternatively, making a smaller North Central region within Hamilton County alone where the highest phosphorus-rich soils are located, with the remainder of the North Central becoming part of the Peninsula Region.

(4) Alternative Approaches Considered by EPA

During EPA's review of the available data and information for derivation of numeric nutrient criteria for Florida's streams, EPA also considered an alternative approach for criteria derivation. EPA is specifically requesting comment on a modified reference condition approach called the benchmark distribution approach, as described below.

(a) Benchmark Distribution Approach

EPA's previously published guidance has recommended a variety of methods to derive numeric nutrient criteria.[67] One method, the reference condition approach, relies on the identification of reference waters that exhibit minimal impacts from anthropogenic disturbance and are known to support designated uses. The thresholds of nutrient concentrations where designated uses are in attainment are calculated from a distribution of the available associated measurements of ambient nutrient concentrations at these reference condition sites.

EPA is seeking comment on a modified reference condition approach, which was developed by FDEP and is referred to as the benchmark distribution approach. The benchmark approach relies on least-disturbed sites rather than true reference, or minimally-impacted, sites. The benchmark distribution is a step-wise procedure used to calculate distributional statistics of TN and TP from identified least-disturbed streams.

(i) Identification of Least-Disturbed Streams

FDEP identified benchmark stream sites in the following step-wise manner (1) compiled a list of sites with low landscape development intensity using FDEP's Landscape Development Intensity Index,[68] (2) eliminated any sites on Florida's CWA section 303(d) list of impaired waters due to nutrients, as well as certain sites impaired for dissolved oxygen, where the State determined the dissolved oxygen impairment was caused by nutrients, (3) eliminated any sites with nitrate concentrations greater than FDEP's 0.35 mg/L proposed nitrate-nitrite criterion in order to reduce the possibility of including sites with far-field human disturbance from groundwater impacts, (4) eliminated sites known by FDEP district scientists to be disturbed, (5) eliminated potentially erroneous data through outlier analysis, (6) verified sites using high resolution aerial photographs, and (7) verified a random sample of the sites in the field.

(ii) Calculation of Benchmark Distribution Approach and Selection of Percentiles From the Benchmark Distribution

FDEP selected either the 75th or 90th percentile of the benchmark distribution approach from FDEP's proposed nutrient regions (75th percentile—Bone Valley; 90th percentile—Panhandle, North Central, Northeast, and Peninsula). FDEP's rationale for selecting either the 75th or 90th percentiles was based on the degree of certainty regarding the benchmark sites reflecting least-disturbed conditions and a probability (10% for the 90th percentile) of falsely identifying a least-disturbed site as being impaired for nutrients.

With this approach, the distribution of available annual geometric means of nutrient concentrations for the benchmark sites within the regional classes of streams is calculated. To compute the numeric criteria for the causal variables, TN, and TP, EPA is seeking comment on whether the 75th or 90th percentile of the benchmark distribution for each nutrient stream region should be selected. As mentioned above, the rationale for selecting either the 75th or 90th percentiles is based on the degree of certainty regarding the benchmark sites reflecting least-disturbed conditions and a probability of falsely identifying a least-disturbed site as being impaired for nutrients or vice-versa. In cases where data are more limited for a given nutrient region (*i.e.,* in the Bone Valley there were only four sites), the 75th percentile may be more appropriate because the 90th percentile may not be sufficiently robust (*i.e.,* may be highly sensitive to a few data points). In other cases, the 90th percentile may be more appropriate when there is a more extensive data set. For further information, please refer to EPA's TSD for Florida's Inland Waters, Chapter 2: Methodology for Deriving U.S. EPA's Proposed Criteria for Streams.

In evaluating whether to propose this approach, EPA determined that a considerable amount of uncertainty remained whether this approach would result in a list of benchmark sites that represented truly least-disturbed conditions. Specifically, EPA is concerned that nutrient concentrations at these sites may reflect anthropogenic sources (*e.g.,* sources more than 100 meters away from and/or 10 kms upstream of the segment), even if the sites appear least-disturbed on a local basis. EPA is particularly concerned that several benchmark sites in the FDEP dataset appear to have a high potential to be affected by fertilizations associated with forestry activities. FDEP provided an analysis in which FDEP concluded that this is not likely.[69] EPA solicits comment on this issue and more generally on whether the benchmark sites identified by FDEP in its July 2009 proposal are an appropriate set of least-disturbed sites on which to base the criteria calculations.

(5) Request for Comment and Data on Alternative Approach

EPA is soliciting comment on the alternative to deriving numeric nutrient criteria for Florida's streams as described in Section III.C(4).

(6) Protection of Downstream Lakes and Estuaries

Two key objectives of WQS are: First, to protect the immediate water body to which a criterion initially applies and, second, to ensure that criteria provide for protection of downstream WQS affected by flow of pollutants from the upstream water body. *See* 40 CFR 131.11 and 131.10(b). EPA WQS regulations reflect the importance of protecting downstream waters by requiring that upstream WQS "provide for the attainment and maintenance of the water quality standards of

[67] U.S. EPA. 2000. Nutrient Criteria Technical Guidance Manual: Rivers and Streams. Office of Water. 4304. EPA–822–B–00–002.

[68] A quantitative, integrated measure of the degree of human landscape disturbance within 100 meters on either side of a specified stream reach and extending to 10 kilometers upstream of the same stream reach.

[69] FDEP document titled, "Responses to Earthjustice's Comments on the Department's Reference Sites." Draft October 2, 2009. Located in the docket ID EPA–HQ–OW–2009–0596.

downstream waters." 40 CFR 131.10(b). Thus, in developing numeric nutrient criteria for Florida, EPA considered both instream aquatic conditions and downstream aquatic ecosystem needs. In addressing the issue of how, if at all, instream criteria values need to be adjusted to assure attainment of downstream standards, EPA necessarily examined the WQS for downstream lakes and estuaries. For lakes, this analysis starts with the numeric nutrient criteria proposed in this notice. For estuaries, this notice proposes an analytical approach to determine the loadings that a particular estuary can receive and still assure attainment and maintenance of the State's WQS for the estuary (*i.e.,* a protective load). An approach is then proposed for translating those downstream loading values into criteria levels in the contributing watershed stream reaches in a manner that ensures that the protective downstream loadings are not exceeded.

In connection with both lakes and estuaries, EPA fully recognizes that there are a range of important technical questions and related significant issues raised by this proposed approach for developing instream water quality criteria that are protective of downstream designated uses. With regard, in particular, to the protection of estuaries, the Agency is working closely with FDEP to derive estuarine numeric nutrient criteria for proposal and publication in 2011. Even though estuarine numeric nutrient criteria will be developed in 2011, there is already a substantial body of information, science, and analysis that presently exists that should be considered in determining flowing water criteria that are protective of downstream water quality.

The substantial data, peer-reviewed methodologies, and extensive scientific analyses available to and conducted by the Agency to date indicate that numeric nutrient criteria for estuaries, when proposed and finalized in 2011, may result in the need for more stringent rivers and streams criteria to ensure protection of downstream water quality, particularly for the nitrogen component of nutrient pollution. Therefore, considering the numerous requests for the Agency to share its analysis and scientific and technical conclusions at the earliest possible opportunity to allow for full review and comment, EPA is including downstream protection values for TN as proposed criteria for rivers and streams to protect the State's estuaries in this notice.

As described in more detail below and in EPA's TSD for Florida's Inland Waters accompanying this notice, these proposed nitrogen downstream protection values are based on substantial data, thorough scientific analysis, and extensive technical evaluation. However, EPA recognizes that additional data and analysis may be available for particular estuaries to help inform what water quality criteria are necessary to protect these waters. EPA also recognizes that substantial site-specific work (including some very sophisticated analyses in the context of certain TMDLs) has been completed for a number of these estuaries. This notice and the proposed downstream protection values are not intended to address or be interpreted as calling into question the utility and protectiveness of these site-specific analyses. Rather, the proposed values represent the output of a systematic and scientific approach that may be generally applicable to all flowing waters in Florida that terminate in estuaries for the purpose of ensuring the protection of downstream estuaries. EPA is interested in obtaining feedback at this time on this systematic and scientific approach. The Agency further recognizes that the proposed values in this notice will need to be considered in the context of the Agency's numeric nutrient criteria for estuaries scheduled for proposal in January of 2011. At this time, EPA plans to finalize any necessary downstream protection values for nitrogen in flowing waters as part of the second phase of this rulemaking process in coordination with the proposal and finalization of numeric criteria for estuarine and coastal waters in 2011. However, if comments, data and analyses submitted as a result of this proposal support finalizing such values sooner, by October 2010, EPA may choose to proceed in this manner. To facilitate this process, EPA requests comments and welcomes thorough evaluation on the need for and the technical and scientific basis of these proposed downstream protection values as part of the broader comment and evaluation process that this proposal initiates.

EPA believes that a detailed consideration and related proposed approach to address protection of downstream water quality in this proposal is necessary for several reasons, including (1) water quality standards are required to protect downstream uses under Federal regulations at 40 CFR 131.10(b), meaning also for prevention of impairment; (2) it may be a relevant consideration in the development of any TMDLs, NPDES permits, and Florida BMAPs that the State completes in the interim period between the final rule for Florida lakes and flowing waters in October 2010 and a final rule for Florida estuarine and coastal waters in October of 2011; and (3) perhaps most importantly, it is essential for informing and supporting a transparent and engaged public consideration, evaluation, and discussion on the question of what existing information, tools, and analyses suggest regarding the need to ensure protection of downstream waters. The Agency continues to emphasize its interest in and request for additional information, further analysis, and any alternative technically-based approaches that may be available to address protection of downstream water quality. EPA also reiterates its commitment to a full evaluation of all comments received and notes the ability to issue a NODA to allow a full public review should significant new additional information and analysis become available as part of the comment period.

In deriving criteria to protect designated uses, as noted above, Federal WQS regulations established to implement the CWA provide WQS must provide for the protection of designated uses in downstream waters. In the case of deriving numeric nutrient criteria for streams in Florida, EPA's analyses reflected in this notice indicate that the proposed criteria values for instream protection of streams may not fully protect downstream lakes and downstream estuaries. EPA's proposed criteria for lakes are, in some cases, more stringent than the proposed criteria for streams that flow into the lakes. For estuaries, EPA's analyses of protective loads delivered to a specific estuary, and the corresponding expected concentration values for streams that flow into that estuary, indicate the proposed criteria for instream protection may not always be sufficient to provide for the attainment and maintenance of the estuarine WQS. For more detailed information, please consult EPA's TSD for Florida's Inland Waters, Chapter 2: Methodology for Deriving U.S. EPA's Proposed Criteria for Streams.

To address each of these issues, EPA is proposing first, for lakes, an equation that allows for input of lake characteristics to determine the concentration in flowing streams that is needed to attain and maintain the receiving lake's designated use and protective criteria. Second, for estuaries, EPA is proposing an approach for identifying the total nutrient loads a particular estuary can receive and still attain and maintain the State's designated use for the water body.

Third, also for estuaries, the Agency is proposing a methodology to derive protective concentration values for the instream criteria where necessary to assure that downstream estuarine loads are not exceeded. The following sections provide a more detailed explanation of the proposed downstream protective approach for lakes and then for estuaries.

(a) Downstream Protection of Lakes

EPA is proposing an equation to relate a lake TP concentration criterion to the concentration needed to be met in incoming streams to support the lake criterion. EPA proposes to apply the resulting stream concentration as the applicable criterion for all stream segments upstream of the lake. EPA used a mathematical modeling approach to derive this equation, with allowable input of lake-specific characteristics, to calculate protective criteria necessary to assure attainment and maintenance of the numeric lake nutrient criteria in this proposal. More specifically, EPA started with a phosphorus loading model equation first developed by Vollenweider.[70] EPA assumed that rainfall exceeds evaporation in Florida lakes and that all external phosphorus loading comes from streams. EPA considers the first assumption reasonable given the rainfall frequency and volume in Florida. The second assumption is reasonable to the extent that surface runoff contributions are far greater than groundwater or atmospheric sources of TP in Florida lakes. EPA requests comment on both these assumptions. After expressing these assumptions in terms of the mathematical relationships among loading rates, stream flow, and lake and stream concentrations, EPA derived the following equation to relate a protective lake criterion to a corresponding protective stream concentration:

$$[TP]_S = \frac{1}{c_f}\,[TP]_L\left(1+\sqrt{\tau_w}\right)$$

where:

$[TP]_S$ is the total phosphorus (TP) downstream lake protection value, mg/L

$[TP]_L$ is applicable TP lake criterion, mg/L

c_f is the fraction of inflow due to all stream flow, $0 \le c_f \le 1$

τ_w is lake's hydraulic retention time (water volume divided by annual flow rate)

The term

$$\left(1+\sqrt{\tau_w}\right)$$

expresses the net phosphorus loss from the water column (*e.g.* via settling of sediment-sorbed phosphorus) as a function of the lake's retention time

This model equation requires input of two lake-specific characteristics: The fraction of inflow due to stream flow and the hydraulic retention time. Water in a lake can come from a combination of groundwater sources, rainfall, and streams that flow into it. Using the model equation above, the calculated stream TP criterion to protect a downstream lake will be more stringent for lakes where the portion of its volume coming from streams flowing into it is the greatest. In addition, the calculated stream TP criterion to protect a downstream lake will be more stringent for lakes with short hydraulic retention times (how long water stays in a lake) because the longer the water stays in the lake, the more phosphorus will settle out in the underlying lake sediment.

Because lake-specific input values may not always be readily available, EPA is providing preset values for percent contribution from stream flow and hydraulic retention time. In Florida lakes, rainfall and groundwater sources tend to contribute a large portion of the total volume of lake water. In fact, only about 20% of the more than 7,000 Florida lakes have a stream flowing into them,[71] with the rest entirely comprised of groundwater and rainwater sources. EPA evaluated representative values for percent contribution from stream flow [72] and hydraulic retention time,[73] and selected 50% stream flow contribution and 0.2 years (about two and a half months) retention time as realistic and representative preset values to provide a protective outcome for Florida lakes, in the absence of site-specific data. Using these preset values, streams that flow into colored lakes would have a TP criterion of 0.12 mg/L, and streams that flow into clear, alkaline lakes would have a TP criterion of 0.073 mg/L, with respect to downstream lake protection. In the Peninsula NWR, this compares to a 0.107 mg/L TP stream criterion protective of instream designated uses. EPA's proposed rule does offer the flexibility to use site-specific inputs to the Vollenweider equation for fraction of inflow from streamflow and hydraulic retention time, as long as data supporting such inputs are sufficiently robust and well-documented.

EPA carefully evaluated use of a settling/loss term for phosphorus in the model equation. Florida lakes tend to be shallow, and internal loadings to the lake water (*e.g.* from re-suspension of settled phosphorus after storms that stir up lake sediment) may be substantial. A more detailed model might be able to simulate this phenomenon mechanistically, but would likely require substantial site-specific data for calibration. For this reason, EPA chose to use the model formulation above. EPA considered a simpler alternative to exclude the settling/loss term from the above equation, or even to reverse the sign on the settling/loss term so that it becomes a net source term, perhaps with the inclusion of a default multiplier. However, EPA did not have sufficient information to conclude that such a conservative approach was necessary as a general application to all Florida lakes. EPA remains open and receptive to comment on these alternatives or other technically sound and protective approaches. EPA's supporting analyses and detailed information on this downstream lake protection methodology are provided in the accompanying TSD for Florida's Inland Waters, Chapter 2: Methodology for Deriving U.S. EPA's Proposed Criteria for Streams.

The same processes that occur in lakes and affect lake water phosphorus concentration may also occur in streams that feed lakes and affect stream water phosphorus concentrations. These processes include sorption to stream bed sediments, uptake into biota, and release into the water column from decaying vegetation. EPA took into consideration these processes when deciding whether it would be appropriate to add a term to the model equation to account for phosphorus loss or uptake within the streams in deriving stream criteria for downstream lake protection. However, the net result of these processes is nutrient spiraling, whereby nutrients released upstream gradually propagate downstream at a rate slower than that of the moving water, and cycle into and out of the food chain in the process. Over the short term, the result may be water concentrations that decrease in the downstream direction. However, unlike for nitrogen, there are no long-term phosphorus net removal processes at work in streams. Phosphorus adsorbed to sediment particles is eventually

[70] Vollenweider, R.A. 1975. Input-output models with special reference to the phosphorus loading concept in limnology. Schweizerische Zeitschrift fur Hydrologie. 37: 53–84; Vollenweider, R.A. 1976. Advances in differing critical loading levels for phosphorus in lake eutrophication. Mem. Ist. Ital. Idrobid. 33:53:83.

[71] Fernald, E.A. and E.D. Purdum. 1998. Water Resources Atlas of Florida. Tallahassee: Institute of Science and Public Affairs, Florida State University.

[72] Gao, X. 2006. Nutrient and Unionized Ammonia TMDLs for Lake Jesup, WBIDs 2981 and 2981A. Prepared by Florida Department of Environmental Protection, Division of Water Resource Management, Bureau of Watershed Management, Tallahassee, FL.

[73] Steward, J.S. and E.F. Lowe. In Press. General empirical models for estimating nutrient load limits for Florida's estuaries and inland waters. *Limnol. Oceanogr.* 55: (in press).

carried downstream with the sediment, and phosphorus taken up by plants is eventually returned to the flowing water. Over the long term, upstream phosphorus inputs are in equilibrium with downstream phosphorus outputs. Recognizing this feature of stream systems and the conservative nature of phosphorus in aquatic environments, EPA concluded that it was not appropriate to include a phosphorus loss term that would apply to streams as they progress toward a downstream lake. For further information, please refer to EPA's TSD for Florida's Inland Waters, Chapter 2: Methodology for Deriving U.S. EPA's Proposed Criteria for Streams.

EPA requests comment on the need for additional instream criteria to protect uses in downstream lakes. EPA further requests comment on the model equation approach presented here to protect downstream lakes, and also requests comment on use of an alternative model such as one with a negative or zero settling term (*i.e.,* set $(1+\sqrt{\tau_w})$ in the equation above either equal to zero or with the plus sign switched to a minus sign). EPA also requests comment on whether and how to address direct surface runoff into the lake. Where this input is substantial and land use around the lake indicates that phosphorus input is likely, EPA believes it may be appropriate to include this water volume contribution as part of the fraction of inflow considered to be streamflow to be protective and consistent with the assumption of no loading from sources other than streamflow. EPA specifically requests comment on use of the Land Development Index (LDI) as an indicator of how to treat this inflow, examination of regional groundwater phosphorus levels to see if a zero TP input from this source is appropriate, and potential development of regionally-specific preset values as inputs to the equation. In addition, EPA requests comment on the potential to develop a corollary approach for nitrogen.

EPA is open to alternative technically-supported approaches based on best available data that offer the ability to address lake-specific circumstances. The Agency recognizes that more specific information may be readily available for individual lakes which could allow the use of alternative approaches such as the BATHTUB model.[74] The Agency welcomes comment and technical analysis on the availability and application of these models. In this regard, EPA requests comment on whether there should be a specific allowance for use of alternative lake-specific models where demonstrated to be protective and scientifically defensible based upon readily and currently available data, and whether use of such alternatives should best be facilitated through use of the SSAC procedure described in Section V.C.

(b) Downstream Protection of Estuaries

(i) Overview

EPA is proposing a methodology for calculation of applicable criteria for streams that flow into estuaries and provide for their protection. The proposed methodology would allow the State to utilize either (1) EPA's downstream protection values (DPVs), or (2) the EPA DPV methodology utilizing EPA's estimates of protective loading to estuaries but with the load re-distributed among the tributaries to each estuary, or (3) an alternative quantitative methodology, based on scientifically defensible approaches, to derive and quantify the protective load to each estuary and the associated protective stream concentrations. The DPV methodology with a re-distributed load may be used if the State provides public notice and opportunity for comment. To use an alternative technical approach, based on scientifically defensible methods to derive and quantify the protective load to each estuary and the associated protective stream concentrations, the State must go through the process for a Federal SSAC as described in Section V.C. In some cases, the substantial and sophisticated analyses and scientific effort already completed in the context of the TMDL process may provide sufficient support for a SSAC. In such circumstances, EPA encourages FDEP to submit these through the SSAC process and EPA looks forward to working with FDEP in this process.

EPA's approach to developing nutrient criteria for streams to protect downstream estuaries in Florida involves two separate steps. The first step is determining the average annual nutrient load that can be delivered to an estuary without impairing designated uses. This is the protective load. The second step is determining nutrient concentrations throughout the network of streams and rivers that discharge into an estuary that, if achieved, are expected to result in nutrient loading to estuaries that do not exceed the protective load. These concentrations, called "downstream protection values" or DPVs, depend on the protective load for the receiving estuary and account for nutrient losses within streams from natural biological processes. In this way, higher DPVs may be appropriate in stream reaches where a significant fraction of either TN or TP is permanently removed within the reach before delivery to downstream receiving waters. EPA's approach utilizes results obtained from a watershed modeling approach called SPAtially Referenced Regressions on Watershed attributes, or SPARROW.[75] The specific model that was used is the South Atlantic, Gulf and Tennessee (SAGT) regional SPARROW model.[76] EPA selected this model because it provided the information that was needed at the appropriate temporal and spatial scales and it applies to all waters that flow to Florida's estuaries.[77] SPARROW was developed by the United States Geological Survey (USGS) and has been reviewed, published, updated and widely applied over the last two decades. It has been used to address a variety of scientific applications, including management and regulatory applications.[78] In order to fully understand EPA's methodology for developing DPVs, it is useful to understand how the approach utilizes results from SPARROW, as well some aspects of how SPARROW works.

[74] Kennedy, R.H., 1995. *Application of the BATHTUB Model to Selected Southeastern Reservoirs.* Technical Report EL–95–14, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS. Walker, W.W., 1985. *Empirical Methods for Predicting Eutrophication in Impoundments; Report 3, Phase II: Model Refinements.* Technical Report E–81–9, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS.

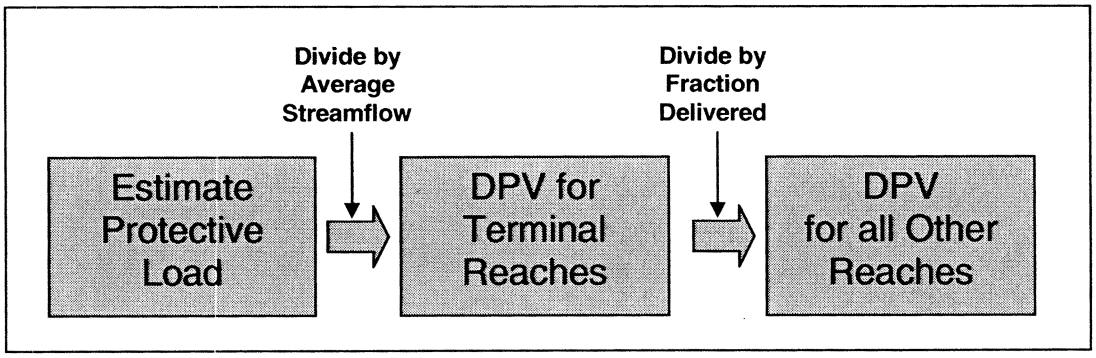
Walker, W.W., 1987. *Empirical Methods for Predicting Eutrophication in Impoundments; Report 4, Phase III: Applications Manual.* Technical Report E–81–9, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS.

[75] *http://water.usgs.gov/nawqa/sparrow.*

[76] Hoos, A.B., and G. McMahon. 2009. Spatial analysis of instream nitrogen loads and factors controlling nitrogen delivery to stream in the southeastern United Sates using spatially referenced regression on watershed attributes (SPARROW) and regional classification frameworks. *Hydrological Processes.* DOI: 10.1002/hyp.7323.

[77] Hoos, A.B., S. Terziotti,, G. McMahon, K. Savvas, K.C. Tighe, and R. Alkons-Wolinsky. 2008. Data to support statistical modeling of instream nutrient load based on watershed attributes, southeastern United States, 2002: U.S. Geological Survey Open-File Report 2008–1163, 50 p.

[78] USGS SPARROW publications Web site: *http://water.usgs.gov/nawqa/sparrow/intro/pubs.html.*



The remaining discussion focuses on TN, for which EPA has already computed DPVs. The approach for computing DPVs for TP from estimates of the protective TP load is expected to be essentially the same as for TN. However, there is some question as to whether the same approach used to determine the protective TN load will also apply to TP. EPA requests comment on this issue.

(ii) EPA Approach to Estimating Protective Nitrogen Loads for Estuaries

The first step in EPA's approach is to narrow the range of possible values. The protective TN load is expected to vary widely among Florida estuaries because they differ significantly in their size and physical and biological attributes. For example, well flushed estuaries are able to receive higher TN loading without adverse effect compared to poorly flushed estuaries. EPA recognized that it may be possible to narrow this initially very broad range of possible protective loads using one consistent approach, and then consider whether additional information might enable a further reduction in uncertainty. EPA is soliciting credible scientific evidence that may improve these estimates and further reduce uncertainty surrounding the proposed protective loads. The most useful evidence would provide a scientific rationale, an alternative estimate of the protective load, and an associated confidence interval for the estimate. For further information, please refer to EPA's TSD for Florida's Inland Waters, Chapter 2: Methodology for Deriving U.S. EPA's Proposed Criteria for Streams.

EPA first narrowed the range of possible protective loads by establishing an estimate of current loading as an upper bound. Most of Florida's estuaries are listed as impaired to some extent by nutrients or nutrient-related causes. Florida's 1998 CWA section 303(d) verified list of impaired waters under the Impaired Waters Rule (FAC 62–303) identify many estuaries or estuary segments that are impaired by nutrients, chlorophyll *a,* or low dissolved oxygen. Many or most estuaries have reduced water clarity and substantial loss of seagrass habitats. The National Estuarine Eutrophication Assessment [79] reports that current conditions are poor for many estuaries in Florida. This information implies that current levels of TN loading are at least an upper limit for the protective load and likely exceed the protective load in many estuaries.

EPA used the SAGT–SPARROW regional watershed model to estimate current loading to each estuary in Florida. While nitrogen loads have been estimated from monitored gauge stations in many stream and rivers, a large fraction of Florida streams and watersheds are not gauged and thus load estimates were not previously available. An approach was needed to spatially extrapolate the available measurements of loading to obtain estimates of loading for all streams including those in unmonitored watersheds or portions of watersheds. The SAGT SPARROW model provided these estimates for all Florida estuarine watersheds. The SPARROW modeling approach utilizes a multiple regression equation to describe the relationship between watershed attributes (*i.e.,* the predictors) and measured instream nutrient loads (*i.e.,* the responses). The statistical methods incorporated into SPARROW help explain instream nutrient water quality data (*i.e.,* the mass flux of nitrogen) as a function of upstream sources and watershed attributes. The SAGT–SPARROW model utilized period of record monitored streamflow and nutrient water quality data from Florida and across the SAGT region for load estimation. SAGT–SPARROW also used extensive geospatial data sets describing topography, land-use, climate, and soil characteristics, nitrogen loading for point sources in Florida obtained from EPA's permit compliance system, and estimates of nitrogen in fertilizer and manure from county-level fertilizer sales, census of agriculture, and population estimates. TN load estimates explain 96% of the variation in observed loads from monitoring sites across the region with no spatial bias at Florida sites.[80] A more thorough description of the SAGT–SPARROW model, the data sources, and analyses are found in the EPA TSD for Florida's Inland Waters and in USGS publications.[81]

EPA further narrowed the range of possible protective loads by establishing the background load as a lower bound. EPA recognizes that a measure of natural background TN loading is the true lower limit, yet EPA recognizes also that some level of anthropogenic nutrient loading is acceptable, difficult to avoid, and unlikely to cause adverse biological responses. The current TN load minus the fraction of TN loading estimated to result from anthropogenic sources is used as an estimate of the background TN load. EPA used the SAGT–SPARROW regional watershed model to estimate background loading. SAGT–SPARROW empirically associates 100% of the measured nutrient loading into one of five classes (fertilizer, manure, urban, point sources, and atmospheric). EPA recognizes that some watershed models define more types of sources, according to their modeling objectives; however, it is important to recognize that these are

[79] Bricker, S., B. Longstaff, W. Dennison, A. Jones, K. Boicourt, C. Wicks and J. Woerner, 2007. Effects of nutrient enrichment in the Nation's estuaries: A decade of change. NOAA Coastal Ocean Program Decision Analysis Series No. 26. National Centers for Coastal Ocean Science, Silver Spring, MD 322.

[80] Hoos, A.B., and G. McMahon. 2009. Spatial analysis of instream nitrogen loads and factors controlling nitrogen delivery to stream in the southeastern United Sates using spatially referenced regression on watershed attributes (SPARROW) and regional classification frameworks. *Hydrological Processes.* DOI: 10.1002/hyp.7323.

[81] Hoos, A.B., S. Terziotti,, G. McMahon, K. Savvas, K.C. Tighe, and R. Alkons-Wolinsky. 2008. Data to support statistical modeling of instream nutrient load based on watershed attributes, southeastern United States, 2002: U.S. Geological Survey Open-File Report 2008–1163, 50 p.

source classes, not sources, and that 100% of the measured loading is accounted for explicitly or implicitly by SPARROW in terms of these source classes.

The class termed "atmospheric" reflects all loading that cannot be empirically attributed to causal variables associated with the other classes. EPA used the estimate for this class of loading as the background TN load. EPA recognizes that the SPARROW-estimated "atmospheric" load includes anthropogenic contributions associated with regional-scale nitrogen emissions and does not represent pre-industrial or true "natural" background loading. The "atmospheric" source term from SPARROW is also not equal to atmospheric nitrogen deposition as measured by the National Atmospheric Deposition Program (NADP). To properly interpret the TN load attributed to the "atmospheric" source term in SPARROW, it is useful to recognize that SPARROW is a nonlinear regression model that seeks to explain measured TN loads in streams and rivers in terms of a series of explanatory variables. The atmospheric term is in all cases less, and often much less, than the measured deposition because not all the nitrogen deposited to the landscape is transported to streams, and not all of the nitrogen transported in streams reaches estuaries. The atmospheric source term from SPARROW excludes all the loading associated with both local anthropogenic nitrogen sources and factors contributing to increased transport of nitrogen from all sources (*e.g.,* impervious surfaces). Therefore, EPA expects that reasonable values for the protective TN load are not likely to be less than these values.

The protective TN load should be less than the current load and greater than the background load. Although this recognition may appear to be trivial, it is important. EPA estimates that TN loads to estuaries across Florida vary approximately 25-fold (~2 to 50 grams of nitrogen per square meter of estuary area). However, the ratio of the current load to the background load varies only between 1.7 and 5; for most estuaries, the range is between 2 and 4. Alternatively stated, current TN loads, which include local anthropogenic nitrogen sources, are two to four-fold higher than the background loads which do not include those sources. Thus, for any specific estuary, there is a relatively narrow range between the upper and lower bounds of potential protective loads.

EPA acknowledges that not all the TN entering estuaries comes directly from the streams within its watershed. In some estuaries, direct atmospheric nitrogen deposition to the estuary surface may be an important source of TN loading to the estuary. Similarly, point sources such as industrial or wastewater treatment plant discharges directly to the estuary can be significant. In general, these sources are most significant when the ratio of watershed area to estuary area is relatively small compared to other estuaries (*e.g.,* St. Andrew Bay, Sarasota Bay). In a few cases in Florida, point source loads directly to the estuary account for a large fraction of the aggregate load from all sources.

As a second step, EPA sought to further reduce the range of possible protective loading values by considering additional evidence. One line of evidence EPA considered is previous estimates of protective loads. These have been developed as part of TMDLs for Florida estuaries or as part of Florida's Pollutant Load Reduction Goal or PLRG program. The scientific approaches utilized for TMDLs and PLRGs vary from simple to sophisticated and have recommended TN loading reductions between 3% and 63%, with a median of 38%. Higher reductions are typically associated with portions of estuaries currently receiving higher anthropogenic loading. Unfortunately, these analyses have not been completed for all of Florida's estuaries. Steward and Lowe (2009) [82] showed that the TN loading limits suggested by TMDLs and PLRGs for a variety of aquatic ecosystems in Florida, including estuaries, could be statistically related to water residence time for the receiving water. EPA evaluated these relationships as an additional line of evidence for estimating protective TN loads for estuaries. EPA found these relationships to confirm in most cases, but not all, that the loading limits were likely between the bounds EPA previously established using SPARROW. However, the limits of uncertainty associated with the relationship were nearly as large as those already established. Nonetheless, the models provide additional support for EPA's estimates of protective estuary loads, but no further refinement of the estimates.

Another approach to considering existing TMDLs and PLRGs is to consider directly the loading rate reductions recommended from those efforts, the median of which is 38% in Florida. This percent TN reduction is similar to the scientific consensus for several well-studied coastal systems elsewhere (*e.g.,* Chesapeake Bay, northern Gulf of Mexico) which have been subjected to increased TN loads from known anthropogenic sources. EPA recognizes that the magnitude of anthropogenic TN loads varies across Florida estuaries and that applying a uniform percent reduction across all estuaries does not account for the variable extent of anthropogenic loads and could lead to estimates below background load. An alternative approach is to assume that the appropriate loading reduction is proportional to the magnitude of anthropogenic enrichment. Thus, EPA suggests that protective TN loading may be estimated by assuming that the anthropogenic component of TN loading should be reduced by a constant fraction.

As a result, EPA computed the protective TN load by reducing the current TN load by one half of the anthropogenic contribution to that load. EPA's protective load estimates are on average 25% less than current TN loading (range = 5 to 40%), consistent with most TMDLs and PLRGs for Florida estuaries.

EPA developed protective TN loads for 16 estuarine water bodies in Florida for the purpose of computing DPVs for streams that are protective of uses in the estuarine receiving waters. EPA did not develop loading targets for the seven estuarine water bodies in south Florida (Caloosahatchee, St. Lucie, Biscayne Bay, Florida Bay, North and South Ten Thousand Islands, and Rookery Bay), because requisite information related to TN loading from the highly managed canals and waterways cannot be derived from SAGT–SPARROW and were not available otherwise, and three in central Florida (coastal drainage areas of the Withlacoochee River, Crystal-Pithlachascotee River and Daytona-St. Augustine) because EPA is still evaluating appropriate protective loads and the flows necessary to derive DPVs.

EPA notes that some stakeholders, including FDEP staff,[83] have raised

[82] Steward, J.S. and E.F. Lowe. 2010. General empirical models for estimating nutrient load limits for Florida's estuaries and inland waters. *Limnology and Oceanography 55(1):433–445.*

[83] For further information on concerns raised by FDEP regarding the use of SPARROW, refer to "Florida Department of Environmental Protection Review of SPARROW: How useful is it for the purposes of supporting water quality standards development?," "Assessment of FDEP Panhandle Stream proposed benchmark numeric nutrient criteria for downstream protection of Apalachicola Bay," and "Analysis of Proposed Freshwater Stream Criteria's Relationship to Protective Levels in the Lower St. Johns River Based on the Lower St. Johns River Nutrient TMDL." located in EPA's docket ID No. EPA–HQ–OW–2009–0596.

concerns about the suitability of the SAGT SPARROW to address downstream protection of estuaries and have suggested alternative models and approaches that have been applied for several of Florida's larger estuaries and their watersheds. These concerns include known limitations of the SPARROW model, particularly related to inadequate resolution of complex hydrology in several parts of the State. EPA also recognizes this limitation and as a result, has not used SAGT SPARROW to propose protective loads and associated downstream protection values for ten estuaries and their watersheds in Florida. EPA acknowledges that other approaches and models may also provide defensible estimates of protective loads.

Among the technical concerns that stakeholders including FDEP staff have raised are that: (1) SPARROW is useful for general pattern, but the large scale calibration lead to large errors for specific areas, (2) SPARROW only utilizes four source inputs, and (3) SPARROW was calibrated to only one year's worth of data. As presented in the above sections, but to briefly reiterate here: (1) SPARROW is calibrated across a larger area, but it utilizes a large amount of Florida site-specific data and it explains 96% of the variation in observed loads from monitoring sites, (2) SPARROW accounts for all sources, but groups them into four general categories, and (3) SPARROW uses available data from the 1975–2004 period at monitored sites. This last concern may be confused with the technical procedure of presenting loading estimates as "detrended to 2002". This procedure accounts for long-term, inter-annual variability to ensure that long-term conditions and trends are represented. The year 2002 was selected as a baseline because it has the best available land use/land cover information available, but the loading estimates, in fact, represent a long-term condition representative of many years of record. EPA encourages technical reviewers to consult with the technical references cited in this section for the complete explanations of technical procedures.

EPA requests comment on its use of the SPARROW model to derive protective loads for downstream estuaries, as well as data and analyses that would support alternate methods of deriving downstream loads, or alternate methods of ensuring protection of designated uses in estuaries. For estuaries where sophisticated scientific analyses have been completed, relying on ample site-specific data to derive protective loads in the context of TMDLs, EPA encourages FDEP to submit resulting alternative DPVs under the SSAC process.

(iii) Computing Downstream Protection Values (DPVs)

Once an estimate of protective TN loads is derived, EPA developed a methodology for computing DPVs, for streams that, if achieved, are expected to result in an average TN loading rate that does not exceed the protective load. EPA's methodology, which is used as the narrative translator, allows for the fraction of the protective TN loading contributed from each tributary within the watershed of an estuary to be determined by the fraction of the total freshwater flow contributed by that tributary. The DPV is specified as an average TN concentration, which is computed by dividing the protective TN load by the aggregate average freshwater inflow from the watershed. This approach results in the same DPV for each stream or river reach that terminates into a given estuary.

EPA's methodology accounts for instream losses of TN. EPA recognizes that not all the TN transported within a stream network will ultimately reach estuaries. Rather, some TN is permanently lost from streams. This is not the same as reversible transformations of TN, such as algal uptake. Losses of TN are primarily associated with bacterially-mediated processes in stream sediments that convert biologically available nitrogen into inert N_2 gas, which enters the atmosphere (a process called denitrification). This occurs more rapidly in shallow streams and at almost negligible rates in deeper streams and rivers. EPA refers to the fraction of nitrogen transported in streams that ultimately reaches estuaries as the "fraction delivered." Estimates of the fraction delivered in Florida are less than 50% in streams very distant from the coast, but is between 80 and 100% in approximately half the stream reaches in Florida's estuarine watersheds.

EPA's approach relies on estimating the fraction of TN delivered to downstream estuaries. Measuring instream loss rates at the appropriate time and space scale is exceedingly difficult, and it is not possible to do State-wide. EPA is not aware of other models or data suitable to estimating nitrogen losses in streams across the State of Florida. EPA obtained estimates from the SAGT–SPARROW model,[84] which is possibly the best generally applicable approach to obtaining these estimates. One reason is that SPARROW estimates watershed-scale instream losses at the annual time scales across the entire region. Estimates of instream losses are modeled in SPARROW using a first-order decay rate as a function of time-of-travel in the reach. The inverse exponential relationship is consistent with scientific understanding that nitrogen losses decrease with increasing stream size and with results from experimental reach-scale studies using a variety of methods.[85] EPA recognizes that stream attributes other than reach time-of-travel or size may influence instream loss rates and though the SPARROW model did not include these, the lack of spatial bias in model residuals suggests that inclusion of other potential subregional-scale or State-wide stream attributes may not improve modeled instream loss estimates.

EPA developed and applied this methodology to compute DPVs for every stream reach in each of 16 estuarine watersheds starting with estuarine-specific estimates of the protective load. These estuarine watersheds align with the Nutrient Watershed Regions (NWR) used to derive instream protection values (IPVs). It is important to note that the scale at which protective loads and DPVs were derived is smaller than for IPVs (*i.e.,* 16 estuarine watersheds vs. 4 nutrient watershed regions). EPA's recognition that some fraction of nitrogen transported in streams is retained or assimilated before reaching estuarine waters help ensure that the DPVs are not overprotective of downstream use in any particular estuary.

In determining TN DPVs, EPA considered the contribution of TN inputs from wastewater discharged in shoreline catchments directly to the estuary. EPA found these point source inputs to be significant (> 5% of total loading) in three (St. Andrew's Bay, St. Marys, St. John's) of the 16 estuaries. However, for the purpose of computing stream reach DPVs for a given estuarine watershed, EPA considered only those TN loads delivered from the estuarine watershed stream network and did not

[84] Hoos, A.B., and G. McMahon. 2009. Spatial analysis of instream nitrogen loads and factors controlling nitrogen delivery to streams in the southeastern United States using spatially referenced regression on watershed attributes (SPARROW) and regional classification frameworks. *Hydrological Processes.* DOI: 10.1002/hyp.7323.

[85] Bohlke, J.K., R.C. Antweiler, J.W. Harvey, A.E. Laursen, L.K. Smith, R.L. Smith, and M.A. Voytek. 2009. Multi-scale measurements and modeling of Denitrification in streams with varying flow and nitrate concentration in the upper Mississippi River basin, USA. *Biogeochemistry* 93: 117–141. DOI 10.1007/s10533–008–9282–8.

include TN inputs from wastewater discharged in shoreline catchments directly to an estuary because these loads do not originate from upstream sources. However, point sources loads directly to the estuary would need to be considered in developing TMDLs based on estuary-specific criteria.

EPA's computation of DPVs using estimates of protective loading for each estuary and the fraction-delivered to estuaries is shown by equation (1):

$$\bar{C}_i = kL_{est}\frac{1}{Q_W F_i}, \qquad (1)$$

where the terms are defined as follows for a specific or (ith) stream reach:

$\bar{C}_i$ maximum flow-averaged nutrient concentration for a specific (the ith) stream reach consistent with downstream use protection (*i.e.,* the DPV)

k fraction of all loading to the estuary that comes from the stream network resolved by SPARROW

L_{est} protective loading rate for the estuary, from all sources

$\bar{Q}_W$ combined average freshwater discharged into the estuary from the portion of the watershed resolved by the SPARROW stream network

F_i fraction of the flux at the downstream node of the specific (ith) reach that is transported through the stream network and ultimately delivered to estuarine receiving waters (*i.e.,* Fraction Delivered).

Note that the quantity kLest is equal to the loading to the estuary from sources resolved by SPARROW. For the purposes of practical implementation, EPA classified each stream water body (*i.e.,* Water Body Identification or "WBID" using the FDEP term) according to the estuarine receiving water and one of six categories based on the fraction of TN delivered (0 to 50%, 51–60%, 61–70%, 71–80%, 81–90%, and 91–100%). For each category, the upper end of the range was utilized to compute the applicable DPV for streams in the category, resulting in a value that will be protective. This approach reduces the number of unique DPVs from thousands to less than 100. Because the stream network utilized by the SAGT–SPARROW watershed model (ERF1) does not recognize all of the smaller streams in Florida (*i.e.,* it is on a larger scale), EPA mapped WBIDs to the applicable watershed-scale unit, or "incremental watersheds," of the ERF1 reaches, assigning to each WBID the fraction of TN delivered estimated for the ERF1 reach whose incremental watershed includes the WBID. Where the WBID includes portions of the incremental watersheds of more than one ERF1 reach, EPA computed a weighted-average based on the proportion of WBID area in the watershed of each ERF1 reach.

Given an even distribution of reaches within each 10% interval, EPA's "binning" approach to the fraction-delivered estimates results in a 5% to 10% margin of safety for the average reach in each range (closer to 10% for the lower fraction-delivered ranges). Potentially larger margins are possible within the 0 to 50% range, where the fraction delivered might be 20%, but the DPV would be computed assuming a fraction delivered of 50%. However, only one watershed in Florida for which EPA is proposing DPVs, the St. Johns River, has a substantial number of reaches estimated to have less than 50% TN delivered to estuarine waters. The SAGT–SPARROW watershed model estimates that 17% of the stream reaches in the St. Johns watershed are in this category, with about half the reaches delivering nearly 50% of TN and a substantial number delivering only 20% of TN. Given EPA's DPV for terminal reaches in the St. Johns watershed, however, the DPV for reaches with a fraction delivered less than 50% will be higher than the IPV, and therefore, will not apply. EPA requests comment on the binning approach for calculating DPVs, which allows for a relatively simple table of DPVs to be presented as compared to using the actual estimate of fraction TN delivered to calculate a DPV unique to each WBID using formula (1), above.

At this time, EPA has not calculated protective TP loads for Florida's estuaries or DPVs for TP. However, advances in the application of regional watershed models, such as SPARROW, that address the sources and terrestrial and aquatic processes that influence the supply and transport of TP in the watershed and delivery to estuaries are currently in advanced stages of development.[86] EPA anticipates obtaining the necessary data and information to compute TP loads for the estuarine water bodies in Florida in 2010 and could make this additional information available by issuing a supplemental **Federal Register** Notice of Data Availability (NODA), which would also be posted in the public docket for this proposed rule. EPA intends to derive proposed protective loads and DPVs for TP using an analogous approach as used for TN DPVs. EPA expects the approach will recognize that TP, like TN, is essential for estuarine processes but in excess will adversely impact aquatic life uses.

(iv) EPA Downstream Protection Values (DPVs)

The following criteria tables and corresponding DPVs for a given stream reach category have been geo-referenced to specific WBIDs which are managed by FDEP as the principal assessment unit for Florida's surface waters. To see where the criteria are geographically applicable, refer to EPA's TSD for Florida's Inland Waters, Appendix B–18: In-Stream and Downstream Protection Value (IPV/DPV) Tables with DPV Geo-Reference Table to Florida WBIDs.

River/stream reach category—percent delivered to estuary[4]	(mg L^{-1})		TP (mg L^{-1})	
	TN IPV[5]	TN DPV[6]	TP IPV[7]	TP DPV[8]
Perdido Bay Watershed [PH] (EDA Code:[1] G140x) Protective TN Load for the Estuary:[2]: 847,520 kg y^{-1} Protective TP Load for the Estuary:[3] TBD				
Less than 50%	*NR*	*NR*	0.043	*TBD*
50.1–60.0%	*NR*	*NR*	0.043	*TBD*
60.1–70.0%	*NR*	*NR*	0.043	*TBD*
70.1–80.0%	*NR*	*NR*	0.043	*TBD*
80.1–90.0%	0.824	0.34	0.043	*TBD*
90.1–100%	0.824	0.30	0.043	*TBD*

[86] Hoos, A.B., S. Terziotti, G. McMahon, K. Savvas, K.C. Tighe, and R. Alkons-Wolinsky. 2008. Data to support statistical modeling of instream nutrient load based on watershed attributes, southeastern United States, 2002: U.S. Geological Survey Open-File Report 2008—1163, 50 p.

River/stream reach category—percent delivered to estuary [4]	(mg L^{-1})		TP (mg L^{-1})	
	TN IPV [5]	TN DPV [6]	TP IPV [7]	TP DPV [8]
Pensacola Bay Watershed [PH] (EDA Code: [1] G130x) Protective TN Load for the Estuary: [2] 4,388,478 kg y^{-1} Protective TP Load for the Estuary: [3] TBD				
Less than 50%	*NR*	*NR*	0.043	*TBD*
50.1–60.0%	*NR*	*NR*	0.043	*TBD*
60.1–70.0%	*NR*	*NR*	0.043	*TBD*
70.1–80.0%	*NR*	*NR*	0.043	*TBD*
80.1–90.0%	0.824	0.48	0.043	*TBD*
90.1–100%	0.824	0.43	0.043	*TBD*
Choctawhatchee Bay Watershed [PH] (EDA Code: [1] G120x) Protective TN Load for the Estuary: [2] 2,875,861 kg y^{-1} Protective TP Load for the Estuary: [3] TBD				
Less than 50%	*NR*	*NR*	0.043	*TBD*
50.1–60.0%	*NR*	*NR*	0.043	*TBD*
60.1–70.0%	*NR*	*NR*	0.043	*TBD*
70.1–80.0%	0.824	0.48	0.043	*TBD*
80.1–90.0%	0.824	0.43	0.043	*TBD*
90.1–100%	0.824	0.39	0.043	*TBD*
St. Andrew Bay Watershed [PH] (EDA Code: [1] G110x) Protective TN Load for the Estuary: [2] 310,322 kg y^{-1} Protective TP Load for the Estuary: [3] TBDK				
Less than 50%	0.824	0.48	0.043	*TBD*
50.1–60.0%	*NR*	*NR*	0.043	*TBD*
60.1–70.0%	*NR*	*NR*	0.043	*TBD*
70.1–80.0%	0.824	0.30	0.043	*TBD*
80.1–90.0%	0.824	0.27	0.043	*TBD*
90.1–100%	0.824	0.24	0.043	*TBD*
Apalachicola Bay Watershed [PH] (EDA Code: [1] G100x) Protective TN Load for the Estuary: [2] 10,971,582 kg y^{-1} Protective TP Load for the Estuary: [3] TBD				
Less than 50%	0.824	0.91	0.043	*TBD*
50.1–60.0%	*NR*	*NR*	0.043	*TBD*
60.1–70.0%	0.824	0.65	0.043	*TBD*
70.1–80.0%	0.824	0.57	0.043	*TBD*
80.1–90.0%	0.824	0.51	0.043	*TBD*
90.1–100%	0.824	0.46	0.043	*TBD*
Apalachee Bay Watershed [PH] (EDA Code: [1] G090x) Protective TN Load for the Estuary: [2] 2,539,883 kg y^{-1} Protective TP Load for the Estuary: [3] TBD				
Less than 50%	*NR*	*NR*	0.043	*TBD*
50.1–60.0%	*NR*	*NR*	0.043	*TBD*
60.1–70.0%	*NR*	*NR*	0.043	*TBD*
70.1–80.0%	0.824	0.67	0.043	*TBD*
80.1–90.0%	0.824	0.59	0.043	*TBD*
90.1–100%	0.824	0.53	0.043	*TBD*
Econfina/Steinhatchee Coastal Drainage Area [PH] (CDA Code: [1] G086x) Protective TN Load for the Estuary: [2] 185,301 kg y^{-1} Protective TP Load for the Estuary: [3] TBD				
Less than 50%	*NR*	*NR*	0.043	*TBD*
50.1–60.0%	*NR*	*NR*	0.043	*TBD*
60.1–70.0%	*NR*	*NR*	0.043	*TBD*
70.1–80.0%	*NR*	*NR*	0.043	*TBD*
80.1–90.0%	0.824	0.41	0.043	*TBD*
90.1–100%	0.824	0.37	0.043	*TBD*
Suwannee River Watershed[NC] (EDA Code: [1]G080x) Protective TN Load for the Estuary: [2] 5,421,050 kg y^{-1} Protective TP Load for the Estuary: [3] TBD				
Less than 50%	*NR*	*NR*	0.359	*TBD*
50.1–60.0%	*NR*	*NR*	0.359	*TBD*
60.1–70.0%	1.479	0.78	0.359	*TBD*

River/stream reach category—percent delivered to estuary [4]	(mg L^{-1})		TP (mg L^{-1})	
	TN IPV [5]	TN DPV [6]	TP IPV [7]	TP DPV [8]
70.1–80.0%	1.479	0.69	0.359	*TBD*
80.1–90.0%	1.479	0.61	0.359	*TBD*
90.1–100%	1.479	0.55	0.359	*TBD*
Waccasassa Coastal Drainage Area [PN] (CDA Code: [1] 078x) Protective TN Load for the Estuary: [2] 433,756 kg y^{-1} Protective TP Load for the Estuary: [3] TBD				
Less than 50%	*NR*	*NR*	0.107	*TBD*
50.1–60.0%	*NR*	*NR*	0.107	*TBD*
60.1–70.0%	*NR*	*NR*	0.107	*TBD*
70.1–80.0%	*NR*	*NR*	0.107	*TBD*
80.1–90.0%	1.205	0.45	0.107	*TBD*
90.1–100%	1.205	0.40	0.107	*TBD*
Withlacoochee Coastal Drainage Area [PN] (CDA Code: [1] G076x) Protective TN Load for the Estuary: [2] TBD Protective TP Load for the Estuary: [3] TBD				
Less than 50%	1.205	*TBD*	0.107	*TBD*
50.1–60.0%	1.205	*TBD*	0.107	*TBD*
60.1–70.0%	1.205	*TBD*	0.107	*TBD*
70.1–80.0%	1.205	*TBD*	0.107	*TBD*
80.1–90.0%	1.205	*TBD*	0.107	*TBD*
90.1–100%	1.205	*TBD*	0.107	*TBD*
Crystal/Pithlachascotee Coastal Drainage Area [PN] (CDA Code: [1] G074x) Protective TN Load for the Estuary: [2] TBD Protective TP Load for the Estuary: [3] TBD				
Less than 50%	1.205	*TBD*	0.107	*TBD*
50.1–60.0%	*NR*	*TBD*	0.107	*TBD*
60.1–70.0%	*NR*	*TBD*	0.107	*TBD*
70.1–80.0%	*NR*	*TBD*	0.107	*TBD*
80.1–90.0%	1.205	*TBD*	0.107	*TBD*
90.1–100%	1.205	*TBD*	0.107	*TBD*
Tampa Bay Watershed [BV] (EDA Code: [1] G070x) Protective TN Load for the Estuary: [2] 1,289,671 kg y^{-1} Protective TP Load for the Estuary: [3] TBD				
Less than 50%	1.798	1.11	0.739	*TBD*
50.1–60.0%	1.798	0.93	0.739	*TBD*
60.1–70.0%	1.798	0.80	0.739	*TBD*
70.1–80.0%	1.798	0.70	0.739	*TBD*
80.1–90.0%	1.798	0.62	0.739	*TBD*
90.1–100%	1.798	0.56	0.739	*TBD*
Sarasota Bay Watershed [BV] (EDA Code: [1] G060x) Protective TN Load for the Estuary: [2] 155,576 kg y^{-1} Protective TP Load for the Estuary: [3] TBD				
Less than 50%	*NR*	*NR*	0.739	*TBD*
50.1–60.0%	*NR*	*NR*	0.739	*TBD*
60.1–70.0%	*NR*	*NR*	0.739	*TBD*
70.1–80.0%	*NR*	*NR*	0.739	*TBD*
80.1–90.0%	*NR*	*NR*	0.739	*TBD*
90.1–100%	1.798	0.54	0.739	*TBD*
Charlotte Harbor Watershed [BV] (EDA Code: [1] G050w) Protective TN Load for the Estuary: [2] 2,710,107 kg y^{-1} Protective TP Load for the Estuary: [3] TBD				
Less than 50%	NR	NR	0.739	*TBD*
50.1–60.0%	1.798	1.58	0.739	*TBD*
60.1–70.0%	1.798	1.35	0.739	*TBD*
70.1–80.0%	1.798	1.18	0.739	*TBD*
80.1–90.0%	1.798	1.05	0.739	*TBD*
90.1–100%	1.798	0.95	0.739	*TBD*

River/stream reach category—percent delivered to estuary [4]	(mg L^{-1})		TP (mg L^{-1})	
	TN IPV [5]	TN DPV [6]	TP IPV [7]	TP DPV [8]
Indian River Watershed [PN] (EDA Code: [1] S190x) **Protective TN Load for the Estuary: [2] 463,724 kg y^{-1}** **Protective TP Load for the Estuary: [3] TBD**				
Less than 50%	*NR*	*NR*	0.107	*TBD*
50.1–60.0%	*NR*	*NR*	0.107	*TBD*
60.1–70.0%	*NR*	*NR*	0.107	*TBD*
70.1–80.0%	1.205	0.87	0.107	*TBD*
80.1–90.0%	1.205	0.77	0.107	*TBD*
90.1–100%	1.205	0.69	0.107	*TBD*
Caloosahatchee River Watershed [PN,#] (EDA Code: [1] G050a) **Protective TN Load for the Estuary:** [2] TBD **Protective TP Load for the Estuary:** [3] TBD				
Less than 50%	1.205	*TBD*	0.107	*TBD*
50.1–60.0%	1.205	*TBD*	0.107	*TBD*
60.1–70.0%	1.205	*TBD*	0.107	*TBD*
70.1–80.0%	1.205	*TBD*	0.107	*TBD*
80.1–90.0%	1.205	*TBD*	0.107	*TBD*
90.1–100%	1.205	*TBD*	0.107	*TBD*
St. Lucie River Watershed [PN,#] **(EDA Code:** [1] S190x) **Protective TN Load for the Estuary: [2] TBD** **Protective TP Load for the Estuary:** [3] TBD				
Less than 50%	1.205	*TBD*	0.107	*TBD*
50.1–60.0%	1.205	*TBD*	0.107	*TBD*
60.1–70.0%	1.205	*TBD*	0.107	*TBD*
70.1–80.0%	1.205	*TBD*	0.107	*TBD*
80.1–90.0%	1.205	*TBD*	0.107	*TBD*
90.1–100%	1.205	*TBD*	0.107	*TBD*
Kissimmee River Watershed [PN,^] **Protective TN Load for the Estuary:** [2] TBD **Protective TP Load for the Estuary:** [3] TBD				
Less than 50%	1.205	*TBD* [9]	0.107	*TBD* [9]
50.1–60.0%	1.205	*TBD* [9]	0.107	*TBD* [9]
60.1–70.0%	1.205	*TBD* [9]	0.107	*TBD* [9]
70.1–80.0%	1.205	*TBD* [9]	0.107	*TBD* [9]
80.1–90.0%	1.205	*TBD* [9]	0.107	*TBD* [9]
90.1–100%	1.205	*TBD* [9]	0.107	*TBD* [9]
St. John's River Watershed; [PN] (EDA Code: [1] S180x) **Protective TN Load for the Estuary:** [2] 4,954,662 kg y^{-1} **Protective TP Load for the Estuary: [3] TBD**				
Less than 50%	1.205	1.41	0.107	*TBD*
50.1–60.0%	1.205	1.17	0.107	*TBD*
60.1–70.0%	1.205	1.00	0.107	*TBD*
70.1–80.0%	1.205	0.88	0.107	*TBD*
80.1–90.0%	1.205	0.78	0.107	*TBD*
90.1–100%	1.205	0.70	0.107	*TBD*
Daytona/St. Augustine Coastal Drainage Area [PN] (CDA Code: [1] S183x) **Protective TN Load for the Estuary:** [2] TBD **Protective TP Load for the Estuary:** [3] TBD				
Less than 50%	*NR*	*TBD*	0.107	*TBD*
50.1–60.0%	*NR*	*TBD*	0.107	*TBD*
60.1–70.0%	*NR*	*TBD*	0.107	*TBD*
70.1–80.0%	*NR*	*TBD*	0.107	*TBD*
80.1–90.0%	1.205	*TBD*	0.107	*TBD*
90.1–100%	1.205	*TBD*	0.107	*TBD*
Nassau Coastal Drainage Area [PN] (CDA Code: [1] S175x) **Protective TN Load for the Estuary:** [2] 131,389 kg y^{-1} **Protective TP Load for the Estuary:** [3] TBD				
Less than 50%	1.205	0.59	0.107	*TBD*
50.1–60.0%	*NR*	*NR*	0.107	*TBD*
60.1–70.0%	*NR*	*NR*	0.107	*TBD*

River/stream reach category—percent delivered to estuary [4]	(mg L^{-1})		TP (mg L^{-1})	
	TN IPV [5]	TN DPV [6]	TP IPV [7]	TP DPV [8]
70.1–80.0%	*NR*	*NR*	0.107	*TBD*
80.1–90.0%	1.205	0.33	0.107	*TBD*
90.1–100%	1.205	0.30	0.107	*TBD*
St. Mary's River Watershed [PN] (EDA Code: [1] S170x) **Protective TN Load for the Estuary:** [2] 562,644 kg y^{-1} **Protective TP Load for the Estuary:** [3] TBD				
Less than 50%	*NR*	*NR*	0.107	*TBD*
50.1–60.0%	*NR*	*NR*	0.107	*TBD*
60.1–70.0%	*NR*	*NR*	0.107	*TBD*
70.1–80.0%	1.205	0.43	0.107	*TBD*
80.1–90.0%	1.205	0.38	0.107	*TBD*
90.1–100%	1.205	0.34	0.107	*TBD*

Footnotes associated with this table:

[1] Watershed delineated by NOAA's Coastal Assessment Framework and associated Florida Department of Environmental Protection's estuarine and coastal water body identifier (WBID).

[2] Estimated TN load delivered to the estuary protective of aquatic life use. These estimates may be revised pursuant to the EPA final rule for numeric nutrient criteria for Florida's estuaries and coastal waters (October 2011).

[3] Estimated TP load delivered to the estuary protective of aquatic life use. These estimates are currently under development. Preliminary estimates may be revised pursuant to the EPA final rule for numeric nutrient criteria for Florida's estuaries and coastal waters (October 2011).

[4] River/Stream reach categories within each estuarine watershed are linked spatially to a specific FDEP water body identifier (WBID). See Appendix B–18 of the "Technical Support Document for EPA's Proposed Rule for Numeric Nutrient Criteria for Florida's Inland Surface Fresh Waters."

[5] Instream Protection Value (IPV) is the TN concentration protective of instream aquatic life use.

[6] Downstream protection values (DPVs) are estimated TN concentrations in the river/stream reach that meet the estimated TN load, protective of aquatic life use, delivered to the estuarine waters. These estimates may be revised pursuant to the EPA final rule for numeric nutrient criteria for Florida's estuaries and coastal waters (October 2011).

[7] Instream Protection Value (IPV) is the TP concentration protective of instream aquatic life use.

[8] Downstream protection values (DPVs) are estimated TP concentrations in the river/stream reach that meet the estimated TP load, protective of aquatic life use, delivered to the estuarine waters. These estimates are currently under development. Preliminary estimates may be revised pursuant to the EPA final rule for numeric nutrient criteria for Florida's estuaries and coastal waters (October 2011).

[9] EPA's proposed TN and TP criteria for colored lakes (>40 PCU) are 1.2 and 0.050 mg L^{-1}, respectively.

Estimated TN and TP loads protective of aquatic life in the Caloosahatchee and St. Lucie River estuaries, and in turn estimated TN and TP concentrations that would meet those protective loads, could not be calculated using EPA's downstream protection approach. An alternative downstream protection approach will be proposed in EPA's proposed rule for FL estuaries (January 2011).

^ Kissimmee River watershed does not have an EDA or CDA code because it does not drain directly to an estuary or coastal area, but rather indirectly through Lake Okeechobee and the south Florida canal system.

A protective TN and TP load for Lake Okeechobee has not been calculated, however, a TMDL is in effect for TP. EPA's proposed colored lake criteria (> 40 PCU) could be used to develop DPVs for TN and TP for the Kissimmee watershed (see footnote 9).

[LO] DPVs to be based on protective TN and TP loads for Lake Okeechobee. EPA's proposed colored lake criteria (>40 PCU) could be used to develop DPVs for TN and TP for the Kissimmee watershed (see footnote 9).

[NR] There are no stream reaches present in this watershed that have a percent-delivered within this range and thus criteria are not applicable.

[PH] Panhandle Nutrient Watershed Region.

[BV] Bone Valley Nutrient Watershed Region.

[PN] Peninsula Nutrient Watershed Region.

[NC] North Central Nutrient Watershed Region.

[TBD] To be determined.

(v) Application of DPVs for Downstream Estuary Protection

The following discussion further explains the conceptual relationship between IPVs and DPVs for stream criteria. EPA developed IPVs to protect the uses that occur within the stream itself at the point of application, such as protection of the benthic invertebrate community and maintenance of a healthy balance of phytoplankton species. In contrast, EPA developed DPVs for streams to protect WQS of downstream waters. EPA derived DPVs in Florida streams by distributing the protective load from the aggregate stream network identified for each downstream estuary (that is protective of estuarine conditions) across the watershed in proportion to the amount of flow contributed by each stream reach. EPA's approach also accounts for attenuation of nutrients (or loss from the system) as water travels from locations upstream in the watershed to locations near the mouth of the estuary.

When comparing an IPV and DPV that are each deemed to apply to a particular stream segment, the more stringent of the two values is the numeric nutrient criterion that would need to be met when implementing CWA programs. Water bodies can differ significantly in their sensitivity to nutrients in general and to TN specifically. Although not universally true, freshwaters are generally phosphorus-limited and thus more sensitive to phosphorus enrichment because nitrogen is present in excess. Enriching freshwaters with phosphorus does not usually drive these systems into nitrogen limitation but can simply encourage growth of nitrogen-fixing algal species which can convert atmospheric nitrogen into ammonia. Conversely, estuaries are more often nitrogen limited and thus more sensitive to adverse impacts from nitrogen enrichment. As a result, it is not at all surprising that DPVs for TN in Florida are often less than the corresponding IPVs.

Adjustments to DPVs are possible with a redistribution approach, which revises the original uniform assignment of protective downstream estuarine loadings across the estuarine drainage area using the DPV methodology, or by revising either the protective load delivered to the downstream estuary and/or the equivalent DPVs using a technical approach of comparable scientific rigor and the Federal SSAC procedure described in section V.C of this notice.

Re-distributing the allocation of protective loading within an estuarine drainage area, or subset of an estuarine drainage area, is appropriate and protective because the total load delivered to the mouth of the estuary would still meet the protective load. DPVs may be a series of values for each reach in the upstream drainage area such that the sum of reach-specific incremental loading delivered to the estuary equals the protective loading rate taking into account that downstream reaches must reflect loads established for upstream reaches. Adjustments to DPVs may also factor in additional nutrient attenuation provided by already existing landscape modifications or treatment systems, such as constructed wetlands or stormwater treatment areas, where the attenuation is sufficiently documented and not a temporary condition. Unlike re-allocation of an even distribution of loading, these types of adjustments, as well as other site-specific information on alternative fractions delivered, would require use of the SSAC procedure under this proposal. EPA requests comment on whether these adjustments should be allowed to occur in the implementation of the re-allocation process rather than as a SSAC.

A technical approach of comparable scientific rigor will include a systematic data driven evaluation and accompanying analysis of relevant factors to identify a protective load delivered to the estuary. An acceptable alternate numeric approach also includes a method to distribute and apply the load to streams and other waters within the estuarine drainage area in a manner that recognizes conservation of mass and makes use of a peer-reviewed model (empirical or mechanistic) of comparable or greater rigor and scientific defensibility than the USGS SPARROW model. To use an alternative technical approach, the State must go through the process for a Federal SSAC procedure as described in Section V.C.

EPA requests comment on the DPV approach, the technical merit of the estimated protective loadings, and the technical merit of the method for calculating stream reach values. EPA also requests comment on other scientifically defensible approaches for ensuring protection of designated uses in estuaries. At this time, EPA plans to take final action with respect to downstream protection values for nitrogen as part of the second phase of this rulemaking process in coordination with the proposal and finalization of numeric standards for estuarine and coastal waters in 2011. However, if comments, data and analyses submitted as a result of this proposal support finalizing these values sooner, by October 2010, EPA may choose to proceed in this manner. To facilitate this process, EPA requests comments and welcomes thorough evaluation on the technical and scientific basis of these proposed downstream protection values as part of the broader comment and evaluation process that this proposal initiates.

D. Proposed Numeric Nutrient Criteria for the State of Florida's Springs and Clear Streams

(1) Proposed Numeric Nutrient Criteria for Springs and Clear Streams

Springs and their associated spring runs in Florida are a unique class of aquatic ecosystem, highly treasured for their biological, economic, aesthetic, and recreational value. Globally, the largest number of springs (per unit of area), occur in Florida; Florida has over 700 springs and associated spring runs. Many of the larger spring ecosystems in Florida have likely been in existence since the end of the last major ice age (approximately 15,000 to 30,000 years ago). The productivity of the diverse assemblage of aquatic flora and fauna in Florida springs is primarily determined by the naturally high amount of light availability of these waters (naturally high clarity).[87] As recently as 50 years ago, these waters were considered by naturalists and scientists to be some of the most unique and exceptional waters in the State of Florida and the Nation as a whole.

In Florida, springs are also highly valued as a water resource for human use: people use springs for a variety of recreational purposes and are interested in the intrinsic aesthetics of clear, cool water emanating vigorously from beneath the ground. A good example of the value of springs in Florida is the use of the spring boil areas that have sometimes been modified to encourage human recreation (bathing or swimming).[88]

Over the past two decades, scientists have identified two significant anthropogenic factors linked to adverse changes in spring ecosystems that have the potential to permanently alter Florida's spring ecosystems. These are: (1) Pollution of groundwater,[89] principally with nitrate-nitrite, resulting from human land use changes, cultural practices, and explosive population growth; and (2) simultaneous reductions in groundwater supply from human withdrawals.[90] Pollution associated with human activities is one of the most critical issues affecting the health of Florida's springs.[91]

Excess nutrients, in particular excess nitrogen, seep into the soils and move to groundwater.[92] When in excess, nutrients lead to eutrophication of groundwater-fed springs, allowing algae and invasive plant species to displace native plants, which in turn results in an ecological imbalance.[93] Excessive growth of nuisance algae and noxious plant species in turn result in reduced habitat and food sources for native wildlife,[94] excess organic carbon production, accelerated decomposition, and lowered quality of the floor or "bottom" of springs and spring runs, all of which adversely impact the overall health and aesthetics of Florida's springs.

Adverse impacts on the overall health of Florida's springs have been evident over the past several decades. Within the last 20–30 years, observations at

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[87] Brown M.T., K. Chinners Reiss, M.J. Cohen, J.M. Evans, P.W. Inglett, K. Sharma Inglett, K. Ramesh Reddy, T.K. Fraze, C.A. Jacoby, E.J. Phlips, R.L. Knight, S.K. Notestein, R.G. Hamann, and K.A. McKee. 2008. Summary and Synthesis of the Available Literature on the Effects of Nutrients on Spring Organisms and Systems. *http://www.dep.state.fl.us/springs/reports/files/UF_SpringsNutrients_Report.pdf,* University of Florida, Gainesville, Florida.

[88] Scott, T.M., G.H. Means, R.P. Meegan, R.C. Means, S.B. Upchurch, R.E. Copeland, J. Jones, T. Roberts, and A. Willet. 2004. Springs of Florida. Bulletin No, 66. Florida Geological Survey. Tallahassee, FL. 677 pp.

[89] Katz, B.G., H.D. Hornsby, J.F. Bohlke and M.F. Mokray. 1999. Sources and chronology of nitrate contamination in spring water, Suwannee River Basin, Florida. U.S. Geological Survey Water-Resources Investigations Report 99–4252. Reston, VA.

[90] Brown M.T., K. Chinners Reiss, M.J. Cohen, J.M. Evans, P.W. Inglett, K. Sharma Inglett, K. Ramesh Reddy, T.K. Fraze, C.A. Jacoby, E.J. Phlips, R.L. Knight, S.K. Notestein, R.G. Hamann, and K.A. McKee. 2008. Summary and Synthesis of the Available Literature on the Effects of Nutrients on Spring Organisms and Systems. *http://www.dep.state.fl.us/springs/reports/files/UF_SpringsNutrients_Report.pdf,* University of Florida, Gainesville, Florida.

[91] Ibid.

[92] Katz, B.G., H.D. Hornsby, J.F. Bohlke and M.F. Mokray. 1999. Sources and chronology of nitrate contamination in spring water, Suwannee River Basin, Florida. U.S. Geological Survey Water-Resources Investigations Report 99–4252. Reston, VA.

[93] Doyle, R.D. and R.M. Smart. 1998. Competitive reduction of noxious *Lyngbya wollei* mats by rooted aquatic plants. Aquatic Botany 61:17–32.

[94] Stevenson, R.J., A. Pinowska, A. Albertin, and J.O. Sickman. 2007. Ecological condition of algae and nutrients in Florida springs: The Synthesis Report. Prepared for the Florida Department of Environmental Protection. Tallahassee, FL. 58 pp.

Bonn, M.A. and F.W. Bell. 2003. Economic Impact of Selected Florida Springs on Surrounding Local Areas. Report prepared for the Florida Department of Environmental Protection. Tallahassee, FL.

several of Florida's springs suggest that nuisance algae species have proliferated, and are now out-competing and replacing native submerged vegetation. Numerous biological studies have documented excessive algal growth at many major springs. In some of the more extreme examples, such as Silver Springs and Weeki Wachee Springs, algal mat accumulations have become over three feet thick.[95,96]

As a result of human-induced land use changes, cultural practices, and explosive population growth, there has been an increase in the level of pollutants, especially nitrate, in groundwater over the past decades.[97] Because there is no geologic source of nitrogen in springs, all of the nitrogen emerging in spring vents originates from that which is deposited on the land. Historically, nitrate concentrations in Florida's spring discharges were thought to have been around 0.05 mg/L or less, which is sufficiently low to restrict growth of algae and vegetation under "natural" conditions.[98]

Regions where springs emanate in Florida have experienced unprecedented population growth and changes in land use over the past several decades.[99] With these changes in population and growth came a transfer of nutrients, particularly nitrate, to groundwater. Of 125 spring vents sampled by the Florida Geological Survey in 2001–2002, 42% had nitrate concentrations exceeding 0.50 mg/L and 24% had concentrations greater than 1.0 mg/L.[100] Similarly, a recent evaluation of water quality in 13 springs shows that mean nitrate-nitrite levels have increased from 0.05 mg/L to 0.9 mg/L between 1970 and 2002. Overall, data suggest that nitrate-nitrite concentrations in many spring discharges have increased from 10 to 350 fold over the past 50 years, with the level of increase closely correlated with anthropogenic activity and land use changes within the karst regions of Florida where springs predominate.

As nitrate-nitrite concentrations have increased during the past 20 to 50 years, many Florida springs have undergone adverse environmental and biological changes. According to FDEP, there is a general consensus in the scientific community that nitrate is an important factor leading to the observed changes in spring ecosystems, and their associated biological communities. Nitrogen, particularly nitrate-nitrite, appears to be the most problematic nutrient problem in Florida's karst region.[101]

Because nitrate-nitrite has been linked to many of the observed detrimental impacts in spring ecosystems, there is an immediate need to reduce nitrate-nitrite concentrations in spring vents and groundwater. A critical step in achieving reductions in nitrate-nitrite is to develop a numeric nitrate-nitrite criterion for spring systems that will be protective of these unique and treasured resources.[102]

To protect springs and clear streams and to provide assessment levels and restoration goals for those that have already been impaired by nutrients, EPA is proposing numeric nutrient criteria for the following parameter for Florida's springs and clear streams (< 40 PCU) classified as Class I or III waters under Florida law (Rule 62–302.400, F.A.C.):

Nitrate (NO_3)+Nitrite (NO_2) shall not surpass a concentration of 0.35 mg/L as an annual geometric mean more than once in a three-year period, nor surpassed as a long-term average of annual geometric mean values.

In addition to the nitrate-nitrite criterion, TN and TP criteria developed for streams on a watershed basis are also applicable to clear streams. *See* Section III.C(1) "Proposed Numeric Nutrient Criteria for the State of Florida's Rivers and Streams" for the table of proposed TN and TP criteria that would apply to clear streams located within specific watersheds.

(2) Methodology for Deriving EPA's Proposed Criteria for Springs and Clear Streams

EPA's proposed nitrate-nitrite criterion for springs and clear streams are derived from a combination of FDEP laboratory data, field surveys, and analyses which include analyses conducted to determine the stressor response-based thresholds that link nitrate-nitrite levels to biological risk in springs and clear streams. These data document the response of nuisance algae, *Lyngbya wollei* and *Vaucheria sp.,* and periphyton to nitrate-nitrite concentrations. Please refer to EPA's TSD for Florida's Inland Waters, Chapter 3: Methodology for Deriving U.S. EPA's Proposed Criteria for Springs and Clear Streams.

As described in Section III.C(2), the ability to establish protective criteria for both causal and response variables depends on available data and scientific approaches to evaluate these data. EPA has not undertaken the development of TP criteria for springs because phosphorus has historically been present in Florida's springs, given the State's naturally phosphorus-rich geology, and the lack of an increasing trend of phosphorus concentrations in most spring discharges. EPA is not proposing chlorophyll *a* and clarity criteria due to the lack of available data for these response variables in spring systems. Furthermore, scientific evidence examining the strong relationship between rapid periphyton survey data (measurements of the thickness of algal biomass attached to substrate rather than free-floating) and nutrients in clear streams (those with color <40 PCU and canopy cover ≤ 40% which are comparable to most waters found in springs and spring runs) show that benthic algal thickness is highly dependent on nitrogen parameters (TN and total inorganic nitrogen), as opposed to phosphorus. In addition,

[95] Pinowska, A., R.J. Stevenson, J.O. Sickman, A. Albertin, and M. Anderson. 2007. Integrated interpretation of survey for determining nutrient thresholds for macroalgae in Florida Springs: Macroalgal relationships to water, sediment and macroalgae nutrients, diatom indicators and land use. Florida Department of Environmental Protection, Tallahassee, FL.

[96] Stevenson, R.J., A. Pinowska, and Y.K. Wang. 2004. Ecological condition of algae and nutrients in Florida springs. Florida Department of Environmental Protection, Tallahassee, FL.

[97] Scott, T.M., G.H. Means, R.P. Meegan, R.C. Means, S.B. Upchurch, R.E. Copeland, J. Jones, T. Roberts, and A. Willet. 2004. Springs of Florida. Bulletin No, 66. Florida Geological Survey. Tallahassee, FL. 677 pp.

[98] Maddox, G.L., J.M. Lloyd, T.M. Scott, S.B. Upchurch and R. Copeland. 1992. Florida's Groundwater Quality Monitoring Program—Background Hydrochemistry. Florida Geological Survey Special Publication 34. Tallahassee, FL.

[99] Katz, B.G., H.D. Hornsby, J.F. Bohlke and M.F. Mokray. 1999. Sources and chronology of nitrate contamination in spring water, Suwannee River Basin, Florida. U. S. Geological Survey Water-Resources Investigations Report 99–4252. Reston, VA.

Brown M.T., K. Chinners Reiss, M.J. Cohen, J.M. Evans, P.W. Inglett, K. Sharma Inglett, K. Ramesh Reddy, T.K. Fraze, C.A. Jacoby, E.J. Phlips, R.L. Knight, S.K. Notestein, R.G. Hamann, and K.A. McKee. 2008. Summary and Synthesis of the Available Literature on the Effects of Nutrients on Spring Organisms and Systems. *http://www.dep.state.fl.us/springs/reports/files/UF_SpringsNutrients_Report.pdf,* University of Florida, Gainesville, Florida.

[100] Scott, T.M., G.H. Means, R.P. Meegan, R.C. Means, S.B. Upchurch, R.E. Copeland, J. Jones, T. Roberts, and A. Willet. 2004. Springs of Florida. Bulletin No, 66. Florida Geological Survey. Tallahassee, FL. 677 pp.

[101] Brown M.T., K. Chinners Reiss, M.J. Cohen, J.M. Evans, P.W. Inglett, K. Sharma Inglett, K. Ramesh Reddy, T.K. Fraze, C.A. Jacoby, E.J. Phlips, R.L. Knight, S.K. Notestein, R.G. Hamann, and K.A. McKee. 2008. Summary and Synthesis of the Available Literature on the Effects of Nutrients on Spring Organisms and Systems. *http://www.dep.state.fl.us/springs/reports/files/UF_SpringsNutrients_Report.pdf,* University of Florida, Gainesville, Florida.

[102] Brown M.T., K. Chinners Reiss, M.J. Cohen, J.M. Evans, P.W. Inglett, K. Sharma Inglett, K. Ramesh Reddy, T.K. Fraze, C.A. Jacoby, E.J. Phlips, R.L. Knight, S.K. Notestein, R.G. Hamann, and K.A. McKee. 2008. Summary and Synthesis of the Available Literature on the Effects of Nutrients on Spring Organisms and Systems. *http://www.dep.state.fl.us/springs/reports/files/UF_SpringsNutrients_Report.pdf,* University of Florida, Gainesville, Florida.

EPA is proposing to apply the nitrate-nitrite criteria derived for springs to clear streams as a measure to gauge anthropogenic contributions to TN. EPA is not currently proposing criteria for clarity and chlorophyll *a* for clear streams due to the lack of scientific evidence supporting the relationship between these response variables and nutrients. Clear streams show weak relationships between nutrients and chlorophyll *a,* as opposed to color streams where phytoplankton responses occur more readily than periphyton growth. Please refer to EPA's TSD for Florida's Inland Waters, Chapter 3: Methodology for Deriving U.S. EPA's Proposed Criteria for Springs and Clear Streams.

(a) Derivation of Proposed Nitrate-Nitrite Criteria

EPA's goal in deriving nitrate-nitrite criteria for Florida springs and clear streams is to ensure that the criteria will preserve the ecosystem structure and function of Florida's springs and clear streams. EPA reviewed Florida data, FDEP's approach and analyses, and FDEP's proposed nitrate-nitrite criterion for springs and clear streams and has concluded that the FDEP approach and the values FDEP derived represent a scientifically sound basis for the derivation of these criteria. FDEP evaluated results from laboratory scale dosing studies, data from in-situ algal monitoring, real-world surveys of biological communities and nutrient levels in Florida springs, and data on nitrate-nitrite concentrations found in minimally-impacted reference locations.

FDEP analyzed laboratory data[103] that evaluated the growth response of nuisance algae to nitrate addition. FDEP's analysis showed that *Lyngbya wollei* and *Vaucheria sp.* reached 90% of their maximum growth at 0.230 mg/L and 0.261 mg/L nitrate-nitrite, respectively. FDEP also reviewed long-term field surveys that examined the response of nuisance algae, periphyton, and eutrophic indicator diatoms to nitrate-nitrite concentration.[104] The results showed a sharp increase in abundance and/or biomass of the nuisance algae, periphyton, and diatoms at 0.44 mg/L nitrate-nitrite.

FDED also reviewed the field surveys used to develop TMDLs for Wekiva River and Rock Spring Run to evaluate the relationship between the observed excessive algal growth and imbalance in aquatic flora with measurements of nutrients in these particular systems. FDEP found that taxa indicative of eutrophic conditions increased significantly with increasing nitrate-nitrite concentrations above approximately 0.35 mg/L.

Based on its review of a combination of this laboratory and field data, FDEP concluded that significant alterations in community composition (eutrophic indicator diatoms), in combination with an increase in periphyton cell density and biomass, clearly demonstrate that a nitrate-nitrite level in the range between 0.23 mg/L (the laboratory threshold) and 0.44 mg/L (the field study derived value associated with the upper bound nitrate-nitrite concentration where substantial observed biological changes were apparent) is the amount of nitrate-nitrite associated with an imbalance of aquatic flora in spring systems.[105]

FDEP conducted further statistical analyses of the available data from the multiple lines of evidence, applied an appropriate safety factor to ensure that waters would not reach the nitrate-nitrite levels associated with "substantial observed biological changes," and averaged the results to arrive at a final protective threshold value for nitrate-nitrite in springs and clear streams of 0.35 mg/L. Based on the discussion above and corresponding analysis in the TSD for Florida's Inland Waters, EPA has concluded that this value was derived in a scientifically sound manner, appropriately considering the available data, and appropriately interpreting the multiple lines of evidence. Accordingly, EPA is proposing 0.35 mg/L nitrate-nitrite as a protective criterion for aquatic life in Florida's springs and clear streams.

(b) Proposed Criteria: Duration and Frequency

EPA is proposing a duration and frequency expression of an annual geometric mean not to be surpassed more than once in a three-year period to be consistent with the expressions of duration and frequency for other water body types (*e.g.,* lakes, streams, canals) for TN and TP and for the same reasons EPA selected a three-year period for those waters. Second, EPA proposes that the long-term arithmetic average of annual geometric means not exceed the criterion-magnitude concentration. EPA anticipates that Florida will use its standard assessment periods as specified in Rule 62–303, F.A.C. (Impaired Waters Rule) to implement this second provision. EPA has determined that this frequency of excursions should not result in unacceptable effects on aquatic life as it will allow the springs and clear streams aquatic systems enough time to recover from an occasionally elevated year of nutrient loadings. The Agency requests comment on these proposed duration and frequency expressions of the springs and clear streams numeric nutrient criteria.

EPA also considered as an alternative, expressing the criterion as a monthly median not to be surpassed more than 10% of the time. Stated another way, the median value over any given calendar month shall not be higher than the criterion-magnitude value in more than one out of every ten months. It is appropriate to express a monthly criterion as a median because the median is less susceptible to outliers than the geometric mean. This is particularly important when dealing with small sample sizes. This alternative is consistent with the expression that FDEP proposed in July 2009 for its State rule and the expression in the TSD for Florida's Inland Waters that EPA sent out for external scientific peer review in July 2009. The rationale for this alternative is that field data indicate that the response in springs is correlated to monthly exposure at the criterion-magnitude concentration value and a 10% frequency of excursions is a reasonable and fully protective allowance given small sample sizes in any given month (*i.e.,* the anticipated amount of data that will be available for assessment purposes in the future). The clear streams nitrate-nitrite criterion was derived by FDEP based on multiple lines of evidence, with the primary lines of evidence being mesocosm dosing experiments and field studies. These two main studies were conducted by FDEP over very different time frames. One set of mesocosm studies was conducted by FDEP for periods just under one month (*i.e.,* 21 to 28 days), while another, the algal biomass field survey, was conducted over an 18-year period and was analyzed using four to five year averaging periods.[106] While lab

[103] Stevenson, R.J., A. Pinowska, A. Albertin, and J.O. Sickman. 2007. Ecological condition of algae and nutrients in Florida springs: The Synthesis Report. Prepared for the Florida Department of Environmental Protection. Tallahassee, FL. 58 pp.

Cowell, B.C. and C.J. Dawes. 2004. Growth and nitrate-nitrogen uptake by the cyanobacterium *Lyngbya wollei.* J. *Aquatic Plant Management* 42: 69–71.

[104] Gao, X. 2008. Nutrient TMDLs for the Wekiva River (WBIDs 2956, 2956A, and 2956C) and Rock Springs Run (WBID 2967). Florida Department of Environmental Protection, Tallahassee, Florida.

[105] Mattson, R.A., E.F. Lowe, C.L. Lippincott, D. Jian, and L. Battoe. 2006. Wekiva River and Rock Springs Run Pollutant Load Reduction Goals. St. Johns River Water Management District, Palatka, Florida.

[106] Gao, X. 2008. Nutrient TMDLs for the Wekiva River (WBIDs 2956, 2956A, 2956C) and Rock

studies indicate that algal communities can respond to excess nitrate-nitrite over a short period of time, the mesocosm and other dosing studies indicate that this response occurs on the order of a month, which might support a monthly expression of the criterion.[107] However, there is no evidence to suggest that the responses observed within a month under controlled lab settings equate to impairment of the designated use in conditions experienced in State waters. Please refer to EPA's TSD for Florida's Inland Waters, Chapter 3: Methodology for Deriving U.S. EPA's Proposed Criteria for Springs and Clear Streams.

The 10% excursion frequency would recognize that in most cases the monthly "median" would actually be based on a single sample, given that most springs are only sampled monthly at the most. A 10% excursion frequency may be considered a reasonable and fully protective allowance given small sample sizes in any given month, essentially requiring that the monthly median nitrate-nitrate concentrations thought to be fully supportive of relevant designated uses be met 90% of the time.

EPA requests comment on these proposed criteria duration and frequency expressions, and the basis for their derivation. EPA notes that some scientists and resource managers have suggested that nutrient criteria duration and frequency expressions should be more restrictive to avoid seasonal or annual "spikes" from which the aquatic system cannot easily recover, whereas others have suggested that criteria expresssed as simply a long-term average of annual geometric means, consistent with data used in criteria derivation, would still be protective. EPA requests comment on alternative duration and frequency expressions that might be considered protective, including (1) a criterion-duration expressed as a monthly average or geometric mean, (2) a criterion-frequency expressed as meeting allowable magnitude and duration every year, (3) a criterion-frequency expressed as meeting allowable magnitude and duration in more than half the years of a given assessment period, and (4) a criterion-frequency expressed as meeting the allowable magnitude and duration as a long-term average only. EPA further requests comment on whether an expression of the criteria in terms of an arithmetic average of annual geometric mean values based on rolling three-year periods of time would also be protective of the designated use.

(3) Request for Comment and Data on Proposed Approach

EPA believes the proposed nutrient criterion for springs and clear streams in this rule are protective of the designated aquatic life use of these waters in Florida. EPA is soliciting comment on the approach FDEP used and EPA adopted to derive nitrate-nitrite criterion for springs and clear streams, including the data and analyses underlying the proposed criterion. EPA is seeking additional, readily-available, pertinent data and information related to nutrient concentrations or nutrient responses in springs and clear streams in Florida. EPA is also soliciting views on other potential, scientifically sound approaches to deriving protective nitrate-nitrite criterion for springs and clear streams in Florida.

(4) Alternative Approaches: Nitrate-Nitrite Criterion for All Waters as an Independent Criterion

EPA is soliciting comment on the environmental benefits associated with deriving a nitrate-nitrite criterion for all waters covered by this proposal (*i.e.,* all streams, lakes, and canals), in addition to the other proposed nutrient criteria for those water bodies. Adoption of a nitrate-nitrite criterion for waters other than springs and clear streams could be useful from an assessment and management perspective. Florida could use nitrate-nitrite data to identify increasing trends that may indicate the need for more specific controls of certain nitrogen enrichment sources. In cases where waters are impaired for either TN, nitrate-nitrite, or both TN and nitrate-nitrite, FDEP could use the nitrate-nitrite data to potentially target discharges of anthropogenic origin given their relative source contribution to nitrogen enrichment.

This alternative approach, which would involve EPA deriving nitrate-nitrite criteria for all waters or alternatively applying 0.35 mg/L nitrate-nitrite to all waters, could provide additional protection for aquatic life designated uses. The alternative approach would also eliminate the need for FDEP to characterize streams as clear or not. Deriving and applying a nitrate-nitrite criterion to all waters would reduce the likelihood of excess loading of the specific anthropogenic components of TN to colored waters. However, these colored streams may be less likely to show an observed response to nitrate-nitrite due to the presence of tannins that block light penetration. Thus, the presence of color in streams may confound the relationship that produced the 0.35 mg/L nitrate-nitrite criterion.

E. Proposed Numeric Nutrient Criteria for South Florida Canals

(1) Proposed Numeric Nutrient Criteria for South Florida Canals

There are thousands of miles of canals in Florida, particularly in the southeastern part of the State. Canals are artificial waterways that are either the result of modifications to existing rivers or streams, or waters that have been created for various purposes, including drainage and flood control (stormwater management), irrigation, navigation, and recreation. These canals also allow for the creation of many waterfront home sites in Florida. Ecosystems that existed in rivers and streams prior to their modification into canals are altered. These changes can affect fish and wildlife and plant growth, as further explained in the following paragraphs. Newly created canals may have a tendency to fill with aquatic plants. Canals in south Florida vary greatly in size and depth. They can be anywhere from a few feet wide and a few feet deep to hundreds of feet wide and as deep as 30–35 feet.

South Florida canals vary in their hydrology and behavior due to their size, function, and seasonality. Shallow canals with slow water flow have poor turnover of water and little flushing. Large canals also may have low flow and turnover during the dry season. In contrast, during the wet season these same large canals are flowing systems that quickly move large volumes of water, as they were designed to accomplish. Excess nutrients in canals in combination with poor water circulation and decreased levels of dissolved oxygen, can lead to accelerated eutrophication and adverse impacts on other forms of aquatic life such as fish and other aquatic animals. In these canals, the accumulation of decaying organic matter on the canal bottom can also adversely impact healthy aquatic ecosystems.

South Florida canals are highly managed waterways. Some canals are prone to an over-abundance of aquatic plants. Without regular and frequent management, dense vegetation can clog the waterways making navigation difficult and slowing the movement of water through the canal system. This can interfere with flood control, boating, and fishing. Aquatic plants (like plants in the terrestrial environment) respond

Springs Run (WBID 2967). Florida Department of Environmental Protection, Tallahassee, Florida.

[107] Stevenson, R.J., A. Pinowska, A. Albertin, and J.O. Sickman. 2007. Ecological condition of algae and nutrients in Florida springs: The Synthesis Report. Prepared for the Florida Department of Environmental Protection. Tallahassee, FL. 58 pp.

and grow when fertilized with nutrients such as phosphorus and nitrogen, and thus nutrient runoff into canals is likely a significant contributor to both nuisance algal blooms and clogging of canal systems by aquatic plants.

EPA is proposing numeric nutrient criteria for the following parameters and geographic classifications in south Florida, for canals classified as Class III waters under Florida law (Rule 62–302.400, F.A.C.). The proposed and alternative approaches described herein would not apply for TP in canals within the Everglades Protection Area (EvPA) since there is an existing TP criterion of 0.010 mg/L that currently applies to the marshes and adjacent canals within the EvPA (Rule 62–302.540, F.A.C.).

	Chlorophyll *a* (µg/L) [a]	Total phosphorus (TP) (mg/L) [a b]	Total nitrogen (TN) (mg/L) [a]
Canals	4.0	0.042	1.6

[a] Concentration values are based on annual geometric mean not to be surpassed more than once in a three-year period. In addition, the long-term average of annual geometric mean values shall not surpass the listed concentration values. (Duration = annual; Frequency = not to be surpassed more than once in a three-year period or as a long-term average).

[b] Applies to all canals within the Florida Department of Environmental Protection's South Florida bioregion, with the exception of canals within the Everglades Protection Area (EvPA) where the TP criterion of 0.010 mg/L currently applies.

The following sections detail the methodology EPA used to develop the proposed numeric nutrient criteria for canals in south Florida, and request comment on the proposed criteria and their derivation. In addition, EPA is providing details of two alternative options for deriving canal criteria values that EPA considered and is soliciting comments on these alternatives.

(2) Methodology for Deriving EPA's Proposed Criteria for South Florida Canals

Based on the available information for canals, EPA determined that the most scientifically sound way to derive protective numeric nutrient criteria for south Florida's canals is to use a similar approach to what EPA used to derive numeric nutrient criteria for streams. That is, EPA chose a nutrient concentration distribution-based approach using data from only those canals that have been determined to support the applicable designated use. EPA used existing water quality assessments and identified canals that have been determined to be impaired for nutrients. Data for those canals were excluded from the larger data set in order to create a set of data representing canals attaining the designated use of aquatic life, according to FDEP's assessment decisions. For further information, please refer to EPA's TSD for Florida's Inland Waters, Chapter 4: Methodology for Deriving U.S. EPA's Proposed Criteria for Canals.

(a) Derivation of Proposed Numeric Nutrient Criteria for South Florida Canals

EPA derived numeric nutrient criteria for south Florida canals for two causal variables, TN and TP, and one response variable, chlorophyll *a*. In contrast to EPA's proposed criteria for Florida's streams, EPA concluded that there was a sufficient scientific basis for a chlorophyll *a* criterion for south Florida canals. EPA considered chlorophyll *a* to be an appropriate indicator of nutrient impairment in canals on the basis of the observed seasonal flow regimes, particularly during the relatively drier winter months when flows are relatively lower and canal water residence time is relatively higher (as compared to wetter, summer months). Furthermore, EPA found evidence that canals are susceptible to impairment due to excessive chlorophyll *a* based on the number of canals on Florida's CWA section 303(d) list with chlorophyll *a* cited as the parameter of concern. EPA analyzed the range of chlorophyll *a* concentrations in canals and found that 12% of chlorophyll *a* concentration observations occurred at 10 µg/L or higher and 5% of chlorophyll *a* concentration observations occurred at 20 µg/L or higher. As a point of reference, Florida has chlorophyll *a* thresholds of 20 as the numeric interpretations of its narrative nutrient criteria for streams and 11 µg/L for estuaries/open coastal waters, respectively, in its Impaired Waters Rule (IWR) (Rules 62–303.351 and 62–303.353, F.A.C.). Thus, EPA included chlorophyll *a* as a nutrient criterion to protect canal aquatic life designated uses from an unacceptable biological response to excess nutrients.

EPA employed a statistical distribution approach for deriving numeric nutrient criteria for south Florida canals. Specifically, EPA computed statistical distributions and descriptive statistics (*e.g.,* quartiles, mean, standard deviation) of TN, TP, and chlorophyll *a* concentrations from data derived at canal sites across south Florida that are not on the impaired waters list for Florida. EPA has determined that the criteria derived from a distribution of canal data from canals with no evidence of nutrient impairment are appropriate and protective of designated uses.

As described in detail in Section III.C(2)(c), EPA concluded that the 75th percentiles of the respective TN, TP, and chlorophyll *a* distributions would yield values that would ensure that aquatic life designated uses would be protected in south Florida canals. A reasonable choice is one that lies just above the vast majority of the population. The 75th percentile represents such a point on the distribution of TN, TP, and chlorophyll *a* values.

(b) Other Data and Analyses Conducted and Considered by EPA in the Derivation of Proposed Numeric Nutrient Criteria for South Florida Canals

EPA undertook extensive analyses and considered a variety of data and methods for deriving numeric nutrient criteria for Florida's canals. Although EPA derived the proposed values based on the approach outlined in the section above, EPA also factored into its decision-making process the results of these other analyses as additional lines of evidence.

One line of additional evidence is based on an evaluation of the stressor-response relationship between chlorophyll *a* levels in canals and TN and TP levels using a variety of statistical tools. A second line of evidence is based on a consideration of the distribution of chlorophyll *a* measurements, TN measurements, and TP measurements from all canals, impaired and not impaired. Nutrient concentrations at the lower end of these distributions were compared to the concentration that the stressor-response analysis determined to be associated with canals with no evidence of nutrient impairment. The third line of evidence is based on a consideration of the distribution of chlorophyll *a,* TN, and

TP values from only those canals considered to be minimally impacted by nutrient-related pollution. EPA considered each of these lines of evidence in deriving the numeric nutrient criteria for canals.

Because soil or substrate type at the bottom of a canal can influence the nutrient cycling and relationships between the observed biological response and the TP and TN levels in canals, EPA used data on soil types in south Florida along with knowledge of the Everglades Agricultural Area (EAA) and the Everglades Protection Area (EvPA) to subdivide the canal areas for criteria derivation. Thus the first step in these other analyses was to group canals and canal data by soil type. The four groupings consist of histosol and entisol soils of the EAA; histosol and entisol soils of the EvPA; spodosol and alfisol soils and areas west of the EvPA and EAA (hereafter, West Coast); and spodosol, entisol and alfisol soils and areas east of the EvPA and EAA (hereafter East Coast).

EPA then sorted canal data (provided by FDEP, Miami-Dade County, and the South Florida Water Management District) into the four canal groupings. EPA screened the data to ensure the exclusion of the following: (1) Sites without relevant data (*e.g.,* nitrogen, phosphorus, chlorophyll *a*), (2) sites influenced by marine waters, (3) sites within Class IV canals or Lake Okeechobee, (4) data not originating within a canal, (5) data with questionable units, and (6) outlier data. Data were organized by canal regions and year. Each site occurring near the border of a region and/or WBID was visually inspected using geographic information system (GIS) tools to ensure the correct placement of those sites. Local experts were also consulted by EPA. EPA analyzed the resulting regionalized data using statistical distribution and regression analyses. EPA undertook its additional analyses using these canal (and data) groupings.

EPA's analysis of the distribution of chlorophyll *a* values in each of the four groupings of canals (using data from impaired and unimpaired sites) indicated that the lower percentile (*i.e.,* 25th percentile) ranged from 1.9 to 2.2 µg/L for chlorophyll *a* in the EvPA, West Coast, and East Coast, and was 6.3 µg/L for the EAA. EPA's analysis of the distribution of TN values in each of the four groupings of canals indicated that the lower percentile (*i.e.,* 25th percentile) ranged from 0.8 to 1.4 mg/L for the EvPA, West Coast, and East Coast and was 2.1 mg/L for the EAA. EPA's analysis of the distribution of TP values in each of the four groupings of canals indicated that the lower percentile (*i.e.,* 25th percentile) ranged from 0.013 to 0.023 mg/L for the EvPA, West Coast, and East Coast and was 0.048 mg/L for the EAA canals.

In an effort to consider chlorophyll *a,* TN, and TP values in canals minimally impacted by nutrient pollution, EPA identified canal sites surrounded by the EvPA in the east and the Big Cypress National Preserve in the west and considered the distribution of chlorophyll *a,* TN and TP values for these sites. Although EPA acknowledges that these sites have not been thoroughly vetted for biological condition, EPA believes that because they are remote and surrounded by wetlands, that these canal sites represent sites with the lowest impact from human activities. The upper percentile values (*i.e.,* the 75th percentile) from the distributions of chlorophyll *a,* TN and TP values for these lower impact sites are 3.4 µg/L for chlorophyll *a,* 1.3 mg/L for TN and 0.018 mg/L for TP.

When considering the results of these additional analyses and comparing these results to the outcome of EPA's analysis of TN, TP, and chlorophyll *a* concentrations from data derived at canal sites across south Florida that are not on the impaired waters list for Florida, it is clear that EPA's proposed criteria for canals are similar to those derived from alternative approaches and therefore, represent a reasonable integration of these multiple lines of evidence. For further information, please refer to EPA's TSD for Florida's Inland Waters, Chapter 4: Methodology for Deriving U.S. EPA's Proposed Criteria for Canals.

(c) Proposed Criteria: Duration and Frequency

Aquatic life water quality criteria contain three components: magnitude, duration, and frequency. For the TN and TP numeric criteria for canals, the derivation of the criterion-magnitude values is described above and these values are provided in the table in Section III.E(1). The criterion-duration for this magnitude (or averaging period) is specified in *footnote a* of the canals criteria table as an annual geometric mean. EPA is proposing two expressions of allowable frequency, both of which are to be met. First, EPA proposes a no-more-than-one-in-three-years excursion frequency for the annual geometric mean criteria for canals. Second, EPA proposes that the long-term arithmetic average of annual geometric means not exceed the criterion-magnitude concentration. EPA anticipates that Florida will use their standard assessment periods as specified in Rule 62–303, F.A.C. (Impaired Waters Rule) to implement this second provision. These proposed duration and frequency components of the criteria are consistent with the data set used to derive the criteria that contained data from multiple years of record, all seasons, and a variety of hydrologic conditions. EPA has determined that this frequency of excursions should not result in unacceptable effects on aquatic life as it will allow the canal aquatic system enough time to recover from an occasionally elevated year of nutrient loadings. The Agency requests comment on these proposed duration and frequency expressions of the canal numeric nutrient criteria.

EPA notes that some scientists and resource managers have suggested that nutrient criteria duration and frequency expressions should be more restrictive to avoid seasonal or annual "spikes" from which the aquatic system cannot easily recover, whereas others have suggested that criteria expressed as simply a long-term average of annual geometric means, consistent with data used in criteria derivation, would still be protective. EPA requests comment on alternative duration and frequency expressions that might be considered protective, including (1) a criterion-duration expressed as a monthly average or geometric mean, (2) a criterion-frequency expressed as meeting allowable magnitude and duration every year, (3) a criterion-frequency expressed as meeting allowable magnitude and duration in more than half of the years of a given assessment period, and (4) a criterion-frequency expressed as meeting the allowable magnitude and duration as a long-term average only. EPA further requests comment on whether an expression of the criteria in terms of an arithmetic average of annual geometric mean values based on rolling three-year periods of time would also be protective of the designated use.

(3) Request for Comment and Data on Proposed Approach

EPA believes the proposed numeric nutrient criteria for south Florida canals in this rule are protective of the designated uses, consistent with CWA section 303(c)(2)(A) and 40 CFR 131.11(a)(1). EPA solicits comment on the approaches taken by the Agency in this proposal, the data underlying those approaches, and the proposed criteria. EPA is seeking other pertinent scientific data and information that are readily available related to nutrient concentrations or nutrient responses in Class III canals in south Florida.

EPA is soliciting comment specifically on the selection of criteria parameters for TN, TP, and chlorophyll *a;* development of criteria for Class III canals across south Florida; and the conclusion that the proposed criteria for Class III canals are protective of designated uses and adequately account for the spatial and temporal variability of nutrients.

(4) Alternative Approaches for Comment

EPA is requesting comments and views on the advantages and disadvantages of alternative approaches to deriving protective criteria for south Florida canals. These approaches include: (1) A stressor-response approach (based on data from all canals or canals grouped by soil type), and (2) methodologies that have been employed to develop nutrient targets in an EPA-proposed TMDL for dissolved oxygen and nutrients.[108]

As previously described in Section III.E(2)(b), EPA considered the underlying soil type of south Florida canals as a possible basis for geographic classification. Analysis of the underlying soil types, indicated by STATSGO,[109] led EPA to identify the following four canal regions: Everglades Agricultural Area (EAA) comprised of histosol and entisol soils, EvPA comprised of histosol and entisol soils, areas west of the EvPA and EAA, or West Coast, comprised of spodosol and alfisol soils, and areas east of the EvPA and EAA, or East Coast, comprised of spodosol, entisol, and alfisol soils.

Subsequent to classification, the proposed statistical distribution-based approach or the alternatives to the proposed approach described in the following sections could be used to derive numeric nutrient criteria by canal region for any or all of the proposed criteria (*i.e.,* TN, TP, and chlorophyll *a*) provided that sufficient data are available.

(a) Stressor-Response Approach

EPA considered two statistical analyses for assessing the stressor-response relationship between nutrients and biological response. In contrast to the proposed option, which included only data from sites with no evidence of nutrient impairment, the stressor-response analyses included all data regardless of whether sites were associated with WBIDs that have been determined to be impaired. EPA conducted linear and quantile regression analyses between chlorophyll *a,* TP, and TN on a regional and aggregated regional basis. EPA used the linear regression model as a statistical tool to predict the chlorophyll *a* response based on matched chlorophyll *a* and TN and TP data. Similarly, quantile regression was used to analyze the matched nutrient and chlorophyll *a* data. In this application, quantile regression was used to predict the 90th percentile of the distribution of chlorophyll *a* concentration at a given concentration of TN or TP.

To apply either statistical approach for developing numeric nutrient criteria for TP or TN, EPA would need to identify the concentration of chlorophyll *a* that would be protective of the designated use for these canal systems. One approach would be to use EPA's proposed chlorophyll *a* criterion of 4.0 µg/L for canals to derive the TN and TP criteria from stressor-response relationships.

(b) Calculation of TP Criteria for the Everglades Agricultural Area (EAA) Using a Downstream Protection Approach

EPA considered using the methodologies described in the EPA-proposed TMDL [110] for dissolved oxygen and nutrients to develop numeric nutrient criteria, specifically TP, for portions of the EAA. These methodologies are described in the TMDL in Section 4.2.2.1 of the TMDL document, "Approach #1: Estimate STA inflow loads resulting in WQS in downstream waters", and Section 4.2.2.2 of the TMDL document, "Approach #2: Simple modeling approach." The first approach takes into account the downstream criterion of the EvPA and the performance of the stormwater treatment areas (STAs). Based on these considerations, inflowing TP concentrations within the EAA to the STAs were derived to meet the downstream EvPA TP criterion of 0.010 mg/L. The second approach used a model that extrapolated natural background TP concentrations, based on land use changes, for specific WBIDs within the EAA. These approaches could support the derivation of numeric nutrient criteria for TP within the EAA region. Approach #1 would result in a TP concentration of 0.10 mg/L, while Approach #2 would result in a TP concentration of 0.087 mg/L.

(5) Request for Comment and Data on Alternative Approaches

The alternatives for Class III south Florida canal criteria in this proposed rule represent alternative approaches given the availability of data in the State of Florida to date and are consistent with the requirements of both the CWA and EPA's implementing regulations. EPA is soliciting comment on the alternative approaches considered by the Agency in this proposal, the data underlying those approaches, and the proposed alternatives themselves, including criteria expressed as an upper percentile maxima not to be exceeded more than 10% of the time in one year, similar to those discussed for lakes. For further information on the upper percentile criteria for canals, refer to EPA's TSD on Florida's Inland Waters, Chapter 4: Methodology for Deriving U.S. EPA's Proposed Criteria for Canals. EPA is seeking other pertinent data and information related to nutrient concentrations or nutrient responses in Class III canals in south Florida.

F. Comparison Between EPA's and Florida DEP's Proposed Numeric Nutrient Criteria for Florida's Lakes and Flowing Waters

To date, Florida has invested significant resources in its statewide nutrient criteria effort, and has made substantial progress toward developing numeric nutrient criteria. For several years, FDEP has been actively working with EPA on the development of numeric nutrient criteria and EPA has worked extensively with FDEP on data interpretation and technical analyses for developing EPA's recommended numeric nutrient criteria proposed in this rulemaking.

On January 14, 2009, EPA formally determined that numeric nutrient criteria were necessary to protect Florida's lakes and flowing waters and should be developed by January 14, 2010. FDEP, independently from EPA, initiated its own State rulemaking process to adopt numeric nutrient water quality criteria protective of Florida's lakes and flowing waters. According to FDEP, the State initiated its rulemaking process to facilitate the assessment of designated use attainment for Florida's waters and to provide a better means to protect its waters from the adverse effects of nutrient over-enrichment. Florida established a technical advisory committee, which met over a number of years, to help develop its proposed numeric nutrient criteria. The State also held several public workshops to solicit

[108] Proposed Total Maximum Daily Load (TMDL) for Dissolved Oxygen and Nutrient in the Everglades. Prepared by U.S. EPA Region 4. September 2007.

[109] State Soil Geographic (STATSGO) database provided by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS).

[110] Proposed Total Maximum Daily Load (TMDL) for Dissolved Oxygen and Nutrient in the Everglades. Prepared by U.S. EPA Region 4. September 2007.

comment on the draft WQS. While FDEP was progressing with its State rulemaking, EPA moved forward to develop Federal numeric nutrient criteria for Florida's lakes and flowing waters, consistent with EPA's January 14, 2009 determination and based on the best available science.

Most recently, in July 2009, FDEP solicited public comment on its proposed numeric nutrient criteria for lakes and flowing waters. In October 2009, FDEP decided not to bring the draft criteria before the Florida Environmental Regulation Commission (ERC), as had been previously scheduled. FDEP did not make any final decisions as to whether it might be appropriate to ask the ERC to adopt the criteria or some portions of the criteria at a later date.

As described in Section III., EPA is proposing numeric nutrient criteria for the following four water body types: Lakes, streams, springs and clear streams, and canals in south Florida. Given that FDEP has made its proposed numeric nutrient criteria available to the public via its Web site (*http://www.dep.state.fl.us/water/wqssp/nutrients/index.htm*), it is worth providing a comparative overview between the criteria and approaches that EPA is proposing in this rulemaking and the criteria and approaches FDEP had initially proposed. Both EPA and FDEP developed numeric criteria recognizing the hydrologic and spatial variability of nutrients in Florida's lakes and flowing waters. As FDEP indicated on its Web site, FDEP's preferred approach is to develop cause and effect relationships between nutrients and valued ecological attributes, and to establish nutrient criteria based on those cause and effect relationships that ensure that the designated uses of Florida's waters are protected and maintained. As described in EPA's guidance, EPA also recommends this approach when scientifically defensible data are available. Where cause and effect relationships could not be demonstrated, however, both FDEP and EPA relied on a distribution-based approach to derive numeric nutrient criteria protective of applicable designated uses.

To set numeric nutrient criteria for lakes, EPA, like FDEP, is proposing a classification scheme using color and alkalinity based upon substantial data that show that lake color and alkalinity play an important role in the degree to which TN and TP concentrations result in a biological response such as elevated chlorophyll *a* levels. EPA and FDEP both found that correlations between nutrients and response parameters were sufficiently robust to use for criteria development in Florida's lakes. EPA is proposing the same chlorophyll *a* criteria for colored lakes and clear alkaline lakes as FDEP proposed, however, EPA is proposing a lower chlorophyll *a* criterion for clear acidic lakes. EPA, like FDEP, is also proposing an accompanying supplementary analytical approach that Florida can use to adjust general TN and TP lake criteria within a certain range where sufficient data on long-term ambient TN and TP levels are available to demonstrate that protective chlorophyll *a* criteria for a specific lake will still be maintained and attainment of the designated use will be assured.

Lake class	EPA proposed criteria			Florida proposed criteria		
	Chl *a*, μg/L	TN, mg/L	TP, mg/L	Chl *a*, μg/L	TN, mg/L	TP, mg/L
Colored Lakes > 40 PCU	20	1.23–2.25	0.050–0.157	20	1.23–2.25	0.05–0.157
Clear Lakes, Alkaline ≤ 40 PCU and > 50 mg/L $CaCO_3$	20	1.00–1.81	0.030–0.087	20	1.00–1.81	0.03–0.087
Clear Lakes, Acidic ≤ 40 PCU and ≤ 50 mg/L $CaCO_3$	6	0.500–0.900	0.010–0.030	9	0.85–1.14	0.015–0.043

To set numeric nutrient criteria for streams, FDEP recommended a statistical distribution approach based on "benchmark sites" identified in five nutrient regions (five regions for TP and two regions for TN), given that FDEP determined cause and effect relationships to be insufficiently robust for establishing numeric thresholds. FDEP relied on the use of a narrative criterion to protect downstream waters. EPA also concluded that a scientifically defensible cause and effect relationship could not be demonstrated with the available data and that a distribution-based approach was most appropriate. However, EPA considered an alternative approach that evaluated a combination of biological information and data on the distribution of nutrients in a substantial number of healthy stream systems to derive scientifically sound TN and TP criteria for streams.

The respective criteria for instream protection of Florida's streams derived using EPA's recommended approach and FDEP's recommended approach are comparable.

EPA nutrient watershed regions	EPA proposed instream criteria		Florida nutrient watershed regions	FL proposed instream criteria	
	TN (mg/L)	TP (mg/L)		TN (mg/L)	TP (mg/L)
Panhandle	0.824	0.043	Panhandle	0.820	0.069
Bone Valley	1.798	0.739	Bone Valley	1.730	0.415
Peninsula	1.205	0.107	Peninsula	.....	0.116
North Central	1.479	0.359	North Central	.....	0.322
			Northeast	.....	0.101

In terms of protecting downstream waters, EPA used best available science and data related to downstream waters and found that there are cases where the numeric nutrient criteria EPA is proposing to protect instream aquatic life may not be stringent enough to ensure protection of WQS for aquatic life in certain downstream lakes and estuaries. Accordingly, EPA is proposing an equation to be used to adjust stream TP criteria to protect downstream lakes, and a different methodology to adjust TN criteria for streams to ensure protection of WQS for

downstream estuaries. In cases where a stream first flows into a lake and then flows out from the lake into another lake or estuary, the portion of the stream that exits the lakes needs to comply with the downstream protection values for estuaries, assuming that is the terminal reach.

EPA is proposing the same nitrate-nitrite causal variable criterion for springs and clear streams as proposed by FDEP. For canals in south Florida, EPA is proposing a statistical distribution approach based on sites meeting designated uses with respect to nutrients (*i.e.,* not identified as impaired by FDEP) identified in four canal regions. FDEP did not propose numeric nutrient criteria for canals in its rulemaking.

Please refer to Section IV. Under What Conditions Will Florida Be Removed From a Final Rule for information on how State-adopted and EPA-approved WQS could become effective under the CWA 303(c).

G. Applicability of Criteria When Final

EPA's proposed numeric nutrient criteria for Florida's lakes and flowing waters will be effective for CWA purposes 60 days after publication of final criteria and will apply in addition to any other existing CWA-effective criteria for Class I or Class III waters already adopted by the State and submitted to EPA (and for those adopted after May 30, 2000, approved by EPA). EPA requests comment on this proposed effective date. FDEP establishes its designated uses through a system of classes and Florida waters are designated into one of several different classes. Class III waters provide for healthy aquatic life and safe recreational use. Class I waters include all the protection of designated uses provided for Class III waters, and also include protection for designated uses related to drinking water supply. Class I and III waters, together with Class II waters that are designated for shellfish propagation or harvesting, comprise the set of Florida waters that meet the goals articulated in section 101(a)(2) of the CWA and the waters for which EPA is proposing criteria. Pursuant to the schedule set out in EPA's January 2009 determination, Class II waters will be addressed in rulemaking in January 2011. For water bodies designated as Class I and Class III predominately fresh waters, any final EPA numeric nutrient criteria will be applicable CWA water quality criteria for purposes of implementing CWA programs including permitting under the NPDES program, as well as monitoring and assessment based on applicable CWA WQS and establishment of TMDLs.

The proposed criteria in this rule, if and when finalized, would be subject to Florida's general rules of applicability in the same way and to the same extent as are other State-adopted and/or federally-promulgated criteria for Florida waters. *See* proposed 40 CFR 131.43(d)(2). For example, Florida regulations at Rule 62–4.244, F.A.C. authorize mixing zones when deriving effluent limitations for discharges of pollutants to Florida waters. These regulations would apply to permit limitations implementing the criteria in this rule. This proposal includes some additional language on mixing zone requirements to help guide Florida in developing and applying mixing zone policies for nutrient criteria. Specifically, EPA provides that the criteria apply at the appropriate locations within or at the boundary of the mixing zones; otherwise the criteria apply throughout the water body including at the point of discharge into the water body. *See* proposed 40 CFR 131.43(d)(2)(i). Likewise, EPA includes proposed regulatory language specifying that Florida use an appropriate design flow condition, one that matches the proposed criteria duration and frequency, for use in deriving permit limits and establishing wasteload and load allocations for a TMDL. *See* proposed 40 CFR 131.43(d)(2)(ii).

In addition, EPA recognizes that Florida regulations include provisions for assessing whether waters should be included on the list of impaired waters pursuant to section 303(d) of the CWA. *See* Rule 62–303, F.A.C. The Impaired Waters Rule, or IWR, sets out a methodology to identify waters that do not meet the State's WQS and, therefore, are required to be included on CWA section 303(d) lists. The current IWR does not address how to assess waters based on EPA's proposed numeric nutrient criteria. The numeric nutrient criteria in any final rule, nevertheless, will be applicable WQS that must be addressed when the State assesses waters pursuant to CWA section 303(d).

EPA proposes language in this rulemaking that acknowledges the IWR procedures and their function, specifying that those procedures apply where they are consistent with the level of protection provided by the proposed criteria. *See* proposed 40 CFR 131.43(d)(2)(iii). Some IWR provisions, which describe the sufficiency or reliability of information necessary for the State to make an attainment decision, do not change the level of protection afforded Florida waters. These are beyond the scope of WQS under CWA section 303(c). Other provisions of the IWR may provide some additional detail relevant to assessment, such as the number of years worth of data assessed for a particular listing cycle submittal, which should be consistent with the level of protection provided with the proposed criteria. Should any IWR provisions apply a different level of protection than the Federal criteria when making attainment decisions based on proposed criteria, EPA would expect to take appropriate action to ensure that the States' CWA section 303(d) list of impaired waters includes all waters not attaining the Federal criteria.

IV. Under What Conditions Will Federal Standards Be Either Not Finalized or Withdrawn?

Under the CWA, Congress gave states primary responsibility for developing and adopting WQS for their navigable waters. *See* CWA section 303(a)–(c). Although EPA is proposing numeric nutrient criteria for Florida's lakes and flowing waters, Florida continues to have the option to adopt and submit to EPA numeric nutrient criteria for the State's lakes and flowing waters consistent with CWA section 303(c) and implementing regulations at 40 CFR part 131. Consistent with CWA section 303(c)(4), if Florida adopts and submits numeric nutrient criteria and EPA approves such criteria as fully satisfying the CWA before publication of the final rulemaking, EPA will not proceed with the final rulemaking for those waters for which EPA approves Florida's criteria.

Pursuant to 40 CFR 131.21(c), if EPA does finalize this proposed rule, the EPA promulgated WQS would be applicable WQS for purposes of the CWA until EPA withdraws the federally-promulgated standard. Withdrawing the Federal standards for the State of Florida would require rulemaking by EPA pursuant to the requirements of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). EPA would undertake such a rulemaking to withdraw the Federal criteria only if and when Florida adopts and EPA approves numeric nutrient criteria that fully meet the requirements of section 303(c) of the CWA and EPA's implementing regulations at 40 CFR part 131.

If EPA finalizes the proposed restoration standard provision (discussed in Section VI below), that provision would be adopted into regulation and would allow Florida to establish interim designated uses with associated water quality criteria, while maintaining the full CWA section 101(a)(2) aquatic life and/or recreational

designated use of the water as the ultimate goal. EPA may proceed to promulgate numeric nutrient criteria for Florida together with or separate from EPA's proposed restoration standards provision, depending on the comments received on that proposal.

V. Alternative Regulatory Approaches and Implementation Mechanisms

A. Designating Uses

Under CWA section 303(c), states shall adopt designated uses after taking "into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish, and wildlife, recreation in and on the water, agricultural, industrial and other purposes including navigation." Designated uses "shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of [the CWA]." CWA section 303(c)(1). EPA's regulation at 40 CFR 131.3(f) defines "designated uses" as "those uses specified in water quality standards for each water body or segment whether or not they are being attained." Under 40 CFR 131.10, EPA's regulation addressing "Designation of uses", a "use" is a particular function of, or activity in, waters of the United States that requires a specific level of water quality to support it. In other words, designated uses are a state's concise statements of its management objectives and expectations for each of the individual surface waters under its jurisdiction.

In the context of designating uses, states often work with stakeholders to identify a collective goal for their waters that the state intends to strive for as it manages water quality. States may evaluate the attainability of these goals and expectations to ensure they have designated appropriate uses (*see* 40 CFR 131.10(g)). Consistent with CWA sections 101(a)(2) and 303(c)(2)(A), 40 CFR 131.2 provides that states "should, wherever attainable, provide water quality for the protection and propagation of fish, shellfish, and wildlife and for recreation in and on the water." Where states do not designate those uses, or remove those uses, they must demonstrate that such uses are not attainable consistent with 40 CFR 131.10(g). States may determine, based on a UAA, that attaining a designated use is not feasible and propose to EPA to change the use and/or the associated pollutant criteria to something that is attainable. This action to change a designated use must be completed in accordance with EPA regulations (see 40 CFR 131.10(g) and (h)).

Within the framework described above, states have discretion in designating uses. EPA's proposed numeric nutrient criteria for lakes and flowing waters would apply to those waters designated by FDEP as Class I (Potable Water Supplies) or Class III (Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife). If Florida removes the Class I or Class III designated use for any particular water body ultimately affected by this rule, and EPA finds that removal to be consistent with CWA section 303(c) and the regulations at 40 CFR part 131, then the federally-promulgated numeric nutrient criteria would not apply to that water body. Instead, the nutrient criteria associated with the newly designated use would apply to that water body. FDEP has recently restarted an effort to refine the State's current designated use classifications. As this process continues, EPA expects that the State may find some instances where this particular discussion may be relevant and useful as the refinement of uses is investigated further.

Where states can identify multiple waters with similar characteristics and constraints on attainability, EPA interprets the Federal WQS regulation to allow states to conduct a "categorical" use attainability analysis (UAA) under 40 CFR 131.10(g) for such waters. This approach may reduce data collection needs, allowing a single analysis to represent many sites. To use such an approach, however, the State would need to have enough information about each particular site to reliably place each site into a broader category and Florida would need to specifically identify each site covered by the analysis. Florida may wish to consider such an approach for certain waters, such as a network of canals with similar hydrologic and morphological characteristics, which can be characterized as a group and where the necessary level of protection may differ substantially from other lakes or flowing waters within the State.

B. Variances

A variance is a temporary modification to the designated use and associated water quality criteria that would otherwise apply to the receiving water. A variance is based on a UAA and identifies the highest attainable use and associated criteria during the variance period. Typically, variances are time-limited (*e.g.,* three years), but renewable. Modifying the designated use for a particular water through a variance process allows a state to limit the applicability of a specific criterion to that water and to identify an alternative designated use and associated criteria to be met during the term of the variance. A variance should be used instead of removal of a use where the state believes the standard can be attained in a short period of time. By maintaining the standard rather than changing it, the state ensures that further progress will be made in improving water quality and attaining the standard. A variance may be written to address a specified geographical coverage, a specified pollutant or pollutants, and/or a specified pollutant source. All other applicable WQS not specifically modified by the variance would remain applicable (*e.g.,* any other criteria adopted to protect the designated use). State variance procedures, as part of state WQS, must be consistent with the substantive requirements of 40 CFR part 131. A variance allows, among other things, NPDES permits to be written such that reasonable progress is made toward attaining the underlying standards for affected waters without violating section 402(a)(l) of the Act, which requires that NPDES permits must meet the applicable WQS. *See also* CWA section 301(b)(1)(C).

For purposes of this proposal, EPA is proposing criteria that apply to use designations that Florida has already established. EPA believes that the State has sufficient authority to use its adopted and EPA-approved variance procedures with respect to modification of their Class I or Class III uses as it pertains to any federally-promulgated nutrient criteria. For this reason, EPA is not proposing a Federal variance procedure.

C. Site-Specific Criteria

A site-specific criterion is an alternative value to a statewide, or otherwise applicable, water quality criterion that meets the regulatory test of protecting the designated use and having a basis in sound science, but is tailored to account for site-specific conditions. Site-specific alternative criteria (SSAC) may be more or less stringent than the otherwise applicable criteria. In either case, because the SSAC must protect the same designated use and must be based on sound science (*i.e.,* meet the requirement of 40 CFR 131.11(a)), there is no need to modify the designated use or conduct a UAA. SSAC may be appropriate when additional scientific consideration can bring added precision or accuracy to express the necessary level or concentration of a water quality

parameter that is protective of the designated use.

Florida has adopted procedures for developing and adopting SSAC in its WQS regulations at Florida Administrative Code (Rule 62–302.800, F.A.C.). Florida's Type I SSAC procedure is intended to address site-specific situations where a particular water body cannot meet the applicable water quality criterion because of natural conditions. *See* Rule 62–302.800(1). Florida's Type II SSAC procedure is intended to address site-specific situations other than natural conditions where it can be established that an alternative criterion from the broadly applicable criteria established by the State is protective of a water's designated uses. *See* Rule 62–302.800(1), F.A.C. Florida's Type II procedure is primarily intended to address toxics but there is no limitation in its use for other parameters, except for certain parameters identified by FDEP, including nutrients. *See* Rule 62–302.800(2). Florida's regulations currently do not allow use of Type II procedures for nutrient criteria development because the State currently does not have broadly applicable numeric nutrient criteria for State waters. Rather, the current narrative criterion for nutrients is implemented by translating it into numeric loads or concentrations on a case-by-case basis. EPA's proposed rule would not affect Florida's Type I or Type II SSAC procedures.

EPA believes that there would be benefit in establishing a specific procedure in the Federal rule for EPA adoption of SSAC. In this rulemaking, EPA is proposing a procedure whereby the State could develop a SSAC and submit the SSAC to EPA with supporting documentation for EPA's consideration. The State SSAC could be developed under either the State SSAC procedures or EPA technical processes as set out more fully below. EPA elected to propose this approach because this procedure maintains the State in a primary decision-making role regarding development of SSAC for State waters. The procedure that EPA is proposing would also allow the State to submit a proposed SSAC to EPA without having to first go through the State's rulemaking process.

The proposed procedure would provide that EPA could determine that the SSAC should apply in lieu of the generally applicable criteria promulgated pursuant to this rule. The proposed procedures provide that EPA would solicit public comment on its determination. Because EPA's rule would establish this procedure, implementation of this procedure would not require withdrawal of federally-promulgated criteria for affected water bodies in order for the SSAC to be effective for purposes of the CWA. EPA has promulgated similar procedures for EPA granting of variances and SSACs in other federally-promulgated WQS.

EPA also considered technical processes necessary to develop protective numeric nutrient criteria on a site-specific basis. To complete a thorough and successful analysis to develop numeric nutrient SSAC, EPA expects the State to conduct, or direct applicants to the State to conduct, a variety of supporting analyses. For the instream protection value (IPV) for streams, this analysis would, for example, consist of examining both indicators of longer-term response to multiple stressors such as benthic macroinvertebrate health, as determined by Florida's Stream Condition Index (SCI) and indicators of shorter-term response specific to nutrients, such as periphyton algal thickness or chlorophyll *a* levels. The former analysis will help address concerns that a potential nutrient effect is masked by other stressors (such as turbidity which can limit light penetration and primary production response to nutrient response), whereas the latter analysis will help address concerns that a potential nutrient effect is lagging in time and has not yet manifested itself. Indicators of shorter-term response generally would not be expected to exhibit a lag time.

It will also be important to examine a stream system on a watershed basis to ensure that a SSAC established for one segment does not result in adverse effects in nearby segments. For example, a shaded, relatively swift flowing segment may open up to a shallow, slow moving, open canopy segment that is more vulnerable to adverse nutrient impacts. Empirical data analysis of multiple factors affecting the expression of response to nutrients and mechanistic models of ecosystem processes can assist in this type of analysis. It will also be necessary to ensure that a larger load allowed from an upstream segment as a result of a SSAC does not compromise protection on a downstream segment that has not been evaluated.

The intent of this discussion is to illustrate a process that is rigorous and based on sound scientific rationale, without being inappropriately onerous to complete. Corollary analyses for a lake, spring or clear stream, or canal situation would need to be pursued for a SSAC on those systems.

In addition to the procedure that EPA is proposing, Florida always has the option of submitting State-adopted SSAC as new or revised WQS to EPA for review and approval under the CWA section 303(c). There is no bar to a state adopting new or revised WQS for waters covered by a federally-promulgated WQS. For any State-adopted SSAC that EPA approves under section 303(c) of the Act, EPA would also have to complete federal rulemaking to withdraw the Federal WQS for the affected water body before the State SSAC would be the applicable WQS for the affected water body for purposes of the Act. As discussed above, Florida WQS regulations currently do not authorize the State to adopt nutrient SSAC except where natural conditions are outside the limits of broadly applicable criteria established by the State (Rule 62–302.800, F.A.C.).

This proposed SSAC process would also not limit EPA's authority to promulgate SSAC in addition to those developed by the State under the process described in this rule. The proposed rule recognizes that EPA always has the authority to promulgate through rulemaking SSAC for waters that are subject to federally-promulgated water quality criteria.

D. Compliance Schedules

A compliance schedule, or schedule of compliance, refers to "a schedule of remedial measures included in a 'permit,' including an enforceable sequence of interim requirements * * * leading to compliance with the CWA and regulations." 40 CFR 122.2. In an NPDES permit, WQBELs are effluent limits based on applicable WQS for a given pollutant in a specific receiving water (*See* NPDES Permit Writers Manual, EPA–833–B–96–003, December, 1996). In addition, EPA regulations provide that schedules of compliance are to require compliance "as soon as possible."

Florida has adopted a regulation authorizing compliance schedules, and that regulation is not affected by this proposed rule (Rule 62–620.620(6), F.A.C.). The regulation provides, in part, for schedules providing for compliance "as soon as sound engineering practices allow, but not later than any applicable statutes or rule deadline." The complete text of the Florida rules concerning compliance schedules is available at *https://www.flrules.org/gateway/RuleNo.asp?ID=62-620.620.* Florida is, therefore, authorized to grant compliance schedules under its rule for WQBELs based on federally-promulgated criteria.

VI. Proposed Restoration Water Quality Standards (WQS) Provision

As described above, many of Florida's waters do not meet the water quality goals established by the State and envisioned by the CWA because of excess amounts of nutrients. In some cases, restoring these waters could take many years to achieve, especially where there is a large difference between current water quality conditions and the nutrient criteria levels necessary to protect aquatic life. In such cases, Florida may conclude that restoration programs will not result in waters attaining their designated aquatic life use (and associated numeric nutrient criteria) for a long period of time.

EPA's current regulations provide that a state may remove a designated use if it meets certain requirements outlined at 40 CFR 131.10. Under this provision, if the State demonstrates that a designated use is not attainable it may conduct a use attainability analysis (UAA) to revise the designated use to reflect the highest attainable aquatic life use, even though that use may not meet the CWA section 101(a)(2) goal.[111] Another option that states use to address situations for an individual discharger is a discharger-specific variance.[112] Neither of these approaches may be optimal or appropriate solutions if a state determines that certain waters cannot attain aquatic life uses due to excess nutrient in the near term.

Based on numerous workshops, meetings, conversations and day-to-day interactions with state environmental managers, EPA understands that states interested in restoring impaired water may desire the ability to express, in their WQS, successive time periods with incrementally more stringent designated uses and criteria that ultimately result in a designated use and criteria that reflect a CWA section 101(a)(2) designated use. Such an approach would allow the state and stakeholders necessary time to take incremental steps to achieve interim WQS as they move forward to ultimately attain a CWA section 101(a)(2) designated use. Some states have used variances to provide such time in their WQS. However, variances are typically time limited (*e.g.,* three years) and discharger-specific and do not address the challenges of pursuing reductions from a variety of sources across a watershed. In addition, Federal regulations are not explicit in requiring that states pursue feasible (*i.e.* attainable) progress toward achieving the highest attainable use when implementing a variance. Variances also often lack specific milestones and a transparent set of expectations for the public, dischargers, and stakeholders.

EPA seeks comment on this approach to providing Florida with an explicit regulatory mechanism for directing state efforts to achieve incremental progress in a step-wise fashion, applicable to all sources, as a part of its WQS. The proposed regulatory mechanism described in this section applies only to WQS for nutrients in Florida waters subject to this proposed rule.

A "restoration water quality standard" under EPA's proposed rule would be a WQS that Florida could adopt for an impaired water. Under EPA's proposal, the State would retain the current designated use as the ultimate designated use (*e.g.* providing for eventual attainment of a full CWA section 101(a)(2) designated use and the associated criteria). However, under the restoration standard approach proposed in this rule, the State would also adopt interim less stringent designated uses and criteria that would be the basis for enforceable permit requirements and other control strategies during the prescribed timeframes. These interim uses could be no less stringent than an existing use as defined in 40 CFR 131.3, and would have to meet the requirements of 40 CFR 131.10(h)(2). The State would need to demonstrate that the interim uses and criteria, as well as the timeframe, are based on a UAA evaluation of what is attainable and by when. These interim designated uses and criteria and the applicable timeframes would all be incorporated into the State WQS on a site-specific basis, as would be any other designated use change or adoption of site-specific criteria.

For example, a restoration WQS for nutrients for an impaired Class I or Class III colored lake in Florida may take the form of the following for a lake whose current condition represents severely impaired aquatic life with chlorophyll *a* = 40 mg/L, TN = 2.7 mg/L, and TP = 0.15 mg/L:

Time	*Chl a*	TN	TP	Designated Use Description
Year 0–5	35	2.4	0.10	Moderately Impaired Aquatic Life.
Year 6–10	25	1.45	0.06	Slightly Impaired Aquatic Life.
Year 11	20	1.2	0.05	Full Aquatic Life Use.

Including such revised interim designated uses and criteria within the regulations could support efforts by Florida to formally establish enforceable long-term plans for different watersheds or stream reaches to attain the ultimate designated use and the associated criteria. At the same time, the State would be able to ensure that its WQS explicitly reflect the attainable designated uses and water quality criteria to be met at any given time, consistent with the CWA and implementing regulations.

Restoration WQS would provide in the Federal regulations the framework for authorizing the State of Florida to adopt restoration WQS for nutrients, along with maintaining the availability of other tools (*e.g.,* variances and compliance schedule provisions), which provide flexibility regarding permitting individual dischargers. Restoration WQS would require a full public participation process to assure transparency as well as the opportunity for different parties to work together, exchange information and determine what is actually attainable within a particular time frame. Going through this process would provide Florida with a transparent set of expectations to push its waters towards restoration in a realistic yet verifiable manner.

In this notice, EPA proposes restoration WQS as a clear regulatory pathway for the State of Florida to adjust the Class I and Class III designated uses (and associated nutrient criteria) of waters impaired by nutrients that is intended to promote active restoration, maintain progressive improvement, and ensure accountability. This approach would provide the State of Florida with the flexibility to adopt revised designated uses and criteria under a set of specific regulatory requirements.

[111] Clean Water Act section 101(a)(2) states that it is a national goal for water quality, wherever attainable, to provide for the protection and propagation of fish, shellfish, and wildlife and provide for recreation in and on the water

[112] A variance is a temporary modification to the designated use and associated water quality criteria that would otherwise apply. It is based on a use attainability demonstration and targets achievement of the highest attainable use and associated criteria during the variance period.

Under this proposal, the interim designated uses and criteria would be the basis for NPDES permits during the applicable period reflecting the fact that the restoration WQS introduces the critical element of time as part of the complete WQS. This is intended to allow imposition of the maximum feasible point source controls and nonpoint source nutrient reduction strategies to be phased in within the overall context of restoration activities within the watershed. By reflecting how it expects the existing poor quality of its waters to incrementally improve to achieve longer-term WQS goals, Florida could create the flexibility to explore more innovative ways to reach the requirements of the next phase, thus possibly reducing costs or allowing new approaches to resolve complex technological issues, and maximizing transparency with the public during each phase. These waters, however, would still be considered impaired for CWA assessment and listing purposes because the ultimate designated use and criteria would be part of the restoration WQS and would not yet be met.

The restoration standards would be Florida WQS revisions that would go through the process of first being adopted under State law and then approved by EPA. This proposal would include eight requirements for the development of a restoration WQS for nutrients:

1. It must be demonstrated that it is infeasible to attain the full CWA section 101(a)(2) aquatic life designated use during the time periods established for the restoration phases with a UAA based on one of the factors at 40 CFR 131.10(g).

2. The highest attainable designated use and numeric criteria that apply at the termination of the restoration WQS (*i.e.,* the ultimate long-term designated use and numeric criteria to be achieved) must be specified and this use is to include, at a minimum, uses that are consistent with the CWA section 101(a)(2) uses.

3. Interim restoration designated uses and numeric water quality criteria, with each based on achieving the maximum feasible progress during the applicable phase as determined in the UAA, must be established.

4. Specific time periods for each restoration phase must be established. The length of each phase must be based on the UAA demonstration of when interim uses can be attained on a case-specific basis. Interim restoration designated uses and numeric water quality criteria must reflect the highest attainable use during the time period of the restoration phase. The sum of these times periods may not exceed twenty years.

5. The spatial extent to which the restoration WQS will apply (*e.g.,* how far downstream the restoration WQS would apply) must be specified. EPA notes the importance of continuing to meet the requirements for protection of downstream WQS as expressed in section 40 CFR 131.10(b). Adopting restoration WQS upstream of another impaired water may mean the State should also consider restoration WQS for the downstream water.

6. The regulatory requirements for public participation and EPA review and approval whenever revising its WQS must continue to be met. Specifically, a restoration WQS may not include interim uses less stringent than a use that is an "existing use" as defined in 40 CFR 131.3 or that do not meet the requirements of 40 CFR 131.10(h)(2).

7. The State must include in its restoration WQS that if the water body does not attain the interim designated use and numeric water quality criteria at the end of any phase, the restoration WQS will no longer be in effect and the designated use and criteria that was to become effective at the end of the final restoration phase will become immediately effective unless Florida adopts and EPA approves a different revised designated use and criteria.

8. The State must provide that waters for which a restoration WQS is adopted will be recognized as impaired for the purposes of listing impaired waters under section 303(d) of the CWA until the final use is attained.

Under this proposal, EPA would require Florida to adopt the ultimate highest attainable designated use and criteria along with multiple phases reflecting the stepwise improvements in water quality between the initial effective date and when they expect to meet the ultimate highest attainable use as a single restoration WQS package. As with any revision to an aquatic life use, Florida would be required to demonstrate that the ultimate highest attainable designated use cannot be attained during the restoration period, based on one of the factors at 40 CFR 131.10(g)(1)–(6) (*i.e.,* through a UAA). EPA would review the WQS and all supporting documents before approving the restoration WQS.

At the beginning of the first restoration phase, the State would identify current conditions and establish the principle that there can be no further degradation. WQS for the first restoration phase should reflect the outcomes of all controls that can be implemented within the first restoration phase. Additionally, EPA expects that the interim restoration designated use and numeric criteria that are attainable at the end of the restoration phase apply at the beginning of each phase as well as throughout the phase. For each phase, the State would adopt interim designated uses and numeric water quality criteria that reflect achieving the maximum feasible progress. At the end of the first phase, EPA would expect the water body to be meeting the first interim designated use and water quality criteria.

At the beginning of the second phase, the next (more stringent) interim designated use and water quality criteria would go into effect as the applicable WQS that the State would use to direct the next set of control actions. At the conclusion of the second phase, the next (more stringent) interim designated use and water quality criteria would become the applicable WQS. This process would repeat with each subsequent phase. Permit limits written during the restoration phases would include effluent limits as stringent as necessary to meet the applicable interim designated uses and numeric water quality criteria. In constructing each restoration phase (*i.e.* duration and interim designated use and numeric water quality criteria), EPA will require the maximum feasible progress. This means that necessary control actions that would improve water quality and can be implemented within the first phase must be reflected in the interim targets for the first restoration phase. This would include all technology-based requirements for point sources, and cost-effective and reasonable BMPs for nonpoint sources. For treatment upgrades to point sources, EPA expects careful scrutiny of technology that has been successfully implemented in comparable situations and presumes that this is feasible. EPA further expects careful scrutiny of all existing and new technology that will help achieve the ultimate highest attainable use.

EPA recognizes that circumstances may change as controls are implemented and that new information may indicate that the timeframes established in the restoration WQS are too lengthy or possibly unrealistically short. If this is the case, the state has the discretion under 40 CFR 131.10 to conduct a new UAA and revise the interim targets in its restoration WQS after a full public process and EPA approval. However, there is a significant burden on the state to demonstrate what changed to alter the initial analysis and associated expectations for what was attainable for that phase. EPA would expect such a revision only if there was significant new information that

demonstrated that a different schedule and/or set of interim standards represents the maximum feasible progress towards the final designated use and criteria.

If at the end of a phase, the water body is not meeting interim targets, then the restoration WQS would no longer be applicable. In such a case, the applicable WQS would be the ultimate highest attainable use and associated criteria unless the state adopted and submitted for EPA approval a revised WQS. This would help ensure that there would be no delay in implementing control measures. Alternatively, EPA considered an option of allowing the subsequent restoration phases to become applicable on the schedule adopted in the restoration WQS and as supported by the original UAA demonstration, even if the interim use and criteria are not fully achieved on schedule. This might have the advantage of encouraging the adoption of ambitious interim goals in the initial restoration standards, and would allow continued orderly progress towards achievement of the final use and criterion even where an interim step was not fully attained. EPA solicits comment on this alternative approach.

To develop restoration WQS for numeric nutrient criteria, EPA would expect that the state identify waters in need of restoration, produce an inventory of point and nonpoint sources within the watershed, and evaluate current ambient conditions and the necessary reductions to achieve the numeric criteria. The next part of the process would involve determining the combinations of control strategies and management practices available, how likely they are to produce results, and the resources needed to implement them. At this point, the State would be in a good position to determine how much pollution reduction is likely to be attainable under what timeframes. The State could use this information to establish the time periods for each restoration phase consistent with the maximum feasible and attainable progress toward meeting the numeric criteria, establish interim restoration designated uses and water quality criteria, and make the necessary demonstration that it is infeasible to attain the long-term designated use during the time periods established and that the interim phases reflect the highest attainable uses and associated criteria.

For excess nutrient pollution, the contributors to nutrient pollution could include publicly-owned treatment works (POTWs), industrial dischargers, urban and agricultural runoff, atmospheric deposition, and septic systems. Restoration WQS might reflect in an early phase, for example, all feasible short-term POTW treatment upgrades and a schedule to select, fund, and implement longer term nutrient reduction technologies, while aggressively pursuing reductions in nonpoint source runoff. This might include specific plans and a schedule to develop and implement innovative alternative approaches, such as trading programs, where appropriate.

In Florida, many of the steps described above occur in the context of Basin Management Action Plans (BMAPs). FDEP describes BMAPs as:

> * * *the "blueprint" for restoring impaired waters by reducing pollutant loadings to meet the allowable loadings established in a Total Maximum Daily Load (TMDL). It represents a comprehensive set of strategies—permit limits on wastewater facilities, urban and agricultural best management practices, conservation programs, financial assistance and revenue generating activities, etc.—designed to implement the pollutant reductions established by the TMDL. These broad-based plans are developed with local stakeholders—they rely on local input and local commitment—and they are adopted by Secretarial Order to be enforceable.

(*http://www.dep.state.fl.us/Water/watersheds/bmap.htm*) Florida has adopted BMAPs for the Hillsborough River Basin, Lower St. John's River, Log Branch, Orange Creek, and Upper Ocklawaha, and has plans for others to follow. To the extent necessary, FDEP could potentially use aspects of the BMAP process and plans such as these to help form the basis for restoration WQS.

In summary, the WQS program is intended to protect and improve water quality and WQS are meant to guide actions to address the effects of pollution on the Nation's waters. The reality is that as more assessments are being done and TMDLs are being contemplated, and as new criteria are developed and considered, EPA and states face questions about what pollution control measures will meet the WQS, how long it might take, and whether it is feasible to attain the WQS established to meet the goals of the Act. These questions are often difficult to answer because of lack of data, lack of knowledge, and lack of experience in attempting restoration of waters. Stakeholders and co-regulators alike have expressed a desire for ways to pursue progressive water quality improvement and evaluate those improvements to gain the data, knowledge, and experience necessary to ultimately determine the highest attainable use. In response, EPA has been investigating the best ways to use UAAs and related tools to make progress in identifying and achieving the most appropriate designated use.

EPA requests comments on the usefulness of the "restoration WQS" proposal for Florida. EPA requests comment on how restoration WQS will operate in conjunction with listing impaired waters, and establishing NPDES permit limitations, and nonpoint source control strategies, as well as how these requirements should be reflected in regulatory language. EPA also requests comment on the proposed 20-year limit on the schedule to attain the final use and criteria. EPA also requests comments on how a restoration WQS process would be coordinated with the TMDL program and whether the transparency and review procedures for the two approaches, including the conditions under which a State or EPA would be required to develop a TMDL, are comparable. EPA also requests comment on any unintended adverse consequences of this approach for any of its water quality programs. Finally, EPA requests comment on potential definitions of "maximum feasible progress."

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

This proposed rule does not establish any requirements directly applicable to regulated entities or other sources of nutrient pollution. Moreover, existing narrative water quality criteria in State law already require that nutrients not be present in waters in concentrations that cause an imbalance in natural populations of flora and fauna in lakes and flowing waters in Florida.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). It does not include any information collection, reporting, or record-keeping requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Under the CWA WQS program, states must adopt WQS for their waters and must submit those WQS to EPA for approval; if the Agency disapproves a state standard and the state does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA also has the authority to promulgate WQS in any case where the Administrator determines that a new or revised standard is necessary to meet the requirements of the Act. These state standards (or EPA-promulgated standards) are implemented through various water quality control programs including the NPDES program, which limits discharges to navigable waters except in compliance with an NPDES permit. The CWA requires that all NPDES permits include any limits on discharges that are necessary to meet applicable WQS.

Thus, under the CWA, EPA's promulgation of WQS establishes standards that the State implements through the NPDES permit process. The State has discretion in developing discharge limits, as needed to meet the standards. This proposed rule, as explained earlier, does not itself establish any requirements that are applicable to small entities. As a result of this action, the State of Florida will need to ensure that permits it issues include any limitations on discharges necessary to comply with the standards established in the final rule. In doing so, the State will have a number of choices associated with permit writing. While Florida's implementation of the rule may ultimately result in new or revised permit conditions for some dischargers, including small entities, EPA's action, by itself, does not impose any of these requirements on small entities; that is, these requirements are not self-implementing. Thus, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

EPA has prepared an analysis of potential costs associated with meeting these standards.[113] EPA's analysis uses the criteria proposed by FDEP in July 2009 as a baseline against which to estimate the incremental costs of meeting the standards in this proposal. The baseline costs of meeting Florida's proposed standards are estimated to be $102 to $130 million per year. The incremental costs, over and above these baseline costs, of meeting the standards in this NPRM are estimated to be $4.7 to $10.1 million per year. This analysis assumes that most of these costs would fall on non-point sources and the categories of point sources that would be primarily affected are municipal wastewater treatment plants and industrial and general dischargers.[114] EPA estimates the incremental costs for these two categories of dischargers, including small entities, at about $1 million per year.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. The State may use these resulting water quality criteria in implementing its water quality control programs. This proposed rule does not regulate or affect any entity and, therefore, is not subject to the requirements of sections 202 and 205 of UMRA.

EPA determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Moreover, WQS, including those proposed here, apply broadly to dischargers and are not uniquely applicable to small governments. Thus, this proposed rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. 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, as specified in Executive Order 13132. EPA's authority and responsibility to promulgate Federal WQS when state standards do not meet the requirements of the CWA is well established and has been used on various occasions in the past. The proposed rule would not substantially affect the relationship between EPA and the states and territories, or the distribution of power or responsibilities between EPA and the various levels of government. The proposed rule would not alter Florida's considerable discretion in implementing these WQS. Further, this proposed rule would not

[113] Refer to Docket ID EPA–HQ–OW–2009–0596.

[114] EPA was not able to estimate costs for municipal stormwater systems because the need for incremental controls is uncertain.

preclude Florida from adopting WQS that meet the requirements of the CWA, either before or after promulgation of the final rule, thus eliminating the need for Federal standards. Thus, Executive Order 13132 does not apply to this proposed rule.

Although section 6 of Executive Order 13132 does not apply to this action, EPA had extensive communication with the State of Florida to discuss EPA's concerns with the State's nutrient water quality criteria and the Federal rulemaking process. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Subject to the Executive Order 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement. EPA has concluded that this action may have tribal implications. However, the rule will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law.

In the State of Florida, there are two Indian tribes, the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida, with lakes and flowing waters. Both tribes have been approved for treatment in the same manner as a state (TAS) status for CWA sections 303 and 401 and have federally-approved WQS in their respective jurisdictions. These tribes are not subject to this proposed rule. However, this rule may impact the tribes because the numeric nutrient criteria for Florida will apply to waters adjacent to the tribal waters.

EPA has contacted the tribes to inform them of the potential future impact this proposal could have on tribal waters. A meeting with tribal officials has been requested to discuss the draft proposed rule and potential impacts on the tribes. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule does not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it would afford a greater level of protection to both human health and the environment if these numeric nutrient criteria are promulgated for Class I and Class III waters in the State of Florida.

List of Subjects in 40 CFR Part 131

Environmental protection, water quality standards, nutrients, Florida.

Dated: January 14, 2010.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, EPA proposes to amend 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.43 is added as follows:

§ 131.43 Florida.

(a) *Scop*e. This section promulgates numeric nutrient criteria for lakes, streams, springs, canals, estuaries, and coastal waters in the State of Florida. This section also contains provisions for site-specific criteria.

(b) *Definitions*—

(1) *Canal* means a trench, the bottom of which is normally covered by water with the upper edges of its two sides normally above water, excluding all secondary and tertiary canals, classified as Class IV waters, wholly within Florida's agricultural areas.

(2) *Clear stream* means a free-flowing water whose color is less than 40 platinum cobalt units (PCU).

(3) *Lake* means a freshwater water body that is not a stream or other watercourse with some open contiguous water free from emergent vegetation.

(4) *Lakes and flowing waters* means inland surface waters that have been classified as Class I (Potable Water Supplies) or Class III (Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife) water bodies pursuant to Rule 62–302.400, F.A.C., excluding wetlands, and are predominantly fresh waters.

(5) *Nutrient watershed region* means an area of the State, corresponding to coastal/estuarine drainage basin and differing geographical conditions

affecting nutrient levels, as delineated in the Technical Support Document for EPA's Proposed Rule for Numeric Nutrient Criteria for Florida's Inland Surface Fresh Waters.

(6) *Predominantly fresh waters* means surface waters in which the chloride concentration at the surface is less than 1,500 milligrams per liter.

(7) *Spring* means the point where underground water emerges onto the Earth's surface, including its spring run.

(8) *Spring run* means a free-flowing water that originates from a spring or spring group whose primary (>50%) source of water is from a spring or spring group.

(9) *State* shall mean the State of Florida, whose transactions with the U.S. EPA in matters related to this regulation are administered by the Secretary, or officials delegated such responsibility, of the Florida Department of Environmental Protection (FDEP), or successor agencies.

(10) *Stream* means a free-flowing, predominantly fresh surface water in a defined channel, and includes rivers, creeks, branches, canals (outside south Florida), freshwater sloughs, and other similar water bodies.

(11) *Surface water* means water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be classified as surface water when it exits from the spring onto the Earth's surface.

(c) Criteria for Florida waters—

(1) *Criteria for lakes.* The applicable criterion for chlorophyll *a,* total nitrogen (TN), and total phosphorus (TP) for lakes within each respective lake class is shown on the following table:

Long-term average lake color and alkalinity	Chlorophyll *a* [f] (µg/L) [a]	Baseline criteria [b]		Modified criteria (within these bounds) [c]	
		TP (mg/L) [a]	TN (mg/L) [a]	TP (mg/L) [a]	TN (mg/L) [a]
A	B	C	D	E	F
Colored Lakes > 40 PCU	20	0.050	1.23	0.050–0.157	1.23–2.25
Clear Lakes, Alkaline ≤ 40 PCU [d] and > 50 mg/L $CaCO_3$ [e]	20	0.030	1.00	0.030–0.087	1.00–1.81
Clear Lakes, Acidic ≤ 40 PCU [d] and ≤ 50 mg/L $CaCO_3$ [e]	6	0.010	0.500	0.010–0.030	0.500–0.900

[a] Concentration values are based on annual geometric mean not to be surpassed more than once in a three-year period. In addition, the long-term average of annual geometric mean values shall not surpass the listed concentration values. (Duration = annual; Frequency = not to be surpassed more than once in a three-year period or as a long-term average).

[b] Baseline criteria apply unless data are readily available to calculate and apply lake-specific, modified criteria as described below in footnote c and the Florida Department of Environmental Protection issues a determination that a lake-specific modified criterion is the applicable criterion for an individual lake. Any such determination must be made consistent with the provisions in footnote c below. Such determination must also be documented in an easily accessible and publicly available location, such as an official State Web site.

[c] If chlorophyll *a* is below the criterion in column B and there are representative data to calculate ambient-based, lake-specific, modified TP and TN criteria, then FDEP may calculate such criteria within these bounds from ambient measurements to determine lake-specific, modified criteria pursuant to CWA section 303(c). Modified TN and TP criteria must be based on at least three years of ambient monitoring data with (a) at least four measurements per year and (b) at least one measurement between May and September and one measurement between October and April each year. These same data requirements apply to chlorophyll *a* when determining whether the chlorophyll *a* criterion is met for purposes of developing modified TN and TP criteria. If the calculated TN and/or TP value is below the lower value, then the lower value is the lake-specific, modified criterion. If the calculated TN and TP value is above the upper value, then the upper value is the lake-specific, modified criterion. Modified TP and TN criteria may not exceed criteria applicable to streams to which a lake discharges. If chlorophyll *a* is below the criterion in column B and representative data to calculate modified TN and TP criteria are not available, then the baseline TN and TP criteria apply. Once established, modified criteria are in place as the applicable WQS for all CWA purposes.

[d] Platinum Cobalt Units (PCU) assessed as true color free from turbidity. Long-term average color based on a rolling average of up to seven years using all available lake color data.

[e] If alkalinity data are unavailable, a specific conductance of 250 micromhos/cm may be substituted.

[f] Chlorophyll *a* is defined as corrected chlorophyll, or the concentration of chlorophyll *a* remaining after the chlorophyll degradation product, phaeophytin *a*, has been subtracted from the uncorrected chlorophyll *a* measurement.

(2) *Criteria for streams.*

(i) The applicable instream protection value (IPV) criterion for total nitrogen (TN) and total phosphorus (TP) for streams within each respective nutrient watershed region is shown in the following table:

Nutrient watershed region	Instream protection value criteria	
	TN (mg/L) [a]	TP (mg/L) [a]
Panhandle [b]	0.824	0.043
Bone Valley [c]	1.798	0.739
Peninsula [d]	1.205	0.107
North Central [e]	1.479	0.359

[a] Concentration values are based on annual geometric mean not to be surpassed more than once in a three-year period. In addition, the long-term average of annual geometric mean values shall not surpass the listed concentration values. (Duration = annual; Frequency = not to be exceeded more than once in a three-year period or as a long-term average).

[b] Panhandle region includes the following watersheds: Perdido Bay Watershed, Pensacola Bay Watershed, Choctawhatchee Bay Watershed, St. Andrew Bay Watershed, Apalachicola Bay Watershed, Apalachee Bay Watershed, and Econfina/Steinhatchee Coastal Drainage Area.

[c] Bone Valley region includes the following watersheds: Tampa Bay Watershed, Sarasota Bay Watershed, and Charlotte Harbor Watershed.

[d] Peninsula region includes the following watersheds: Waccasassa Coastal Drainage Area, Withlacoochee Coastal Drainage Area, Crystal/Pithlachascotee Coastal Drainage Area, Indian River Watershed, Caloosahatchee River Watershed, St. Lucie Watershed, Kissimmee River Watershed, St. John's River Watershed, Daytona/St. Augustine Coastal Drainage Area, Nassau Coastal Drainage Area, and St. Mary's River Watershed.

[e] North Central region includes the Suwannee River Watershed.

(ii) *Criteria for protection of downstream lakes.*

(A) The applicable total phosphorus criterion-magnitude for a stream that flows into downstream lakes is the more stringent of the value from the preceding table in paragraph (c)(2)(i) of this section or a downstream lake protection value derived from the following equation to protect the downstream lake:

$$[TP]_S = \frac{1}{c_f}[TP]_L\left(1+\sqrt{\tau_w}\right)$$

where:

$[TP]_S$ is the total phosphorus (TP) downstream lake protection value, mg/L
$[TP]_L$ is applicable TP lake criterion, mg/L
c_f is the fraction of inflow due to all streamflow, $0 \le c_f \le 1$
τ_w is lake's hydraulic retention time (water volume divided by annual flow rate)

The term

$$\left(1+\sqrt{\tau_w}\right)$$

expresses the net phosphorus loss from the water column (*e.g.,* via settling of sediment-sorbed phosphorus) as a function of the lake's retention time.

(B) The preset values for c_f and τ_w, respectively, are 0.5 and 0.2. The State may substitute site-specific values for these preset values where the State determines that they are appropriate and documents the site-specific values in an easily accessible and publicly available location, such as an official State Web site.

(iii) *Criteria for protection of downstream estuarine waters.*

(A) The applicable criteria for a stream that flows into downstream estuary is the more stringent of the values from the preceding table in paragraph (c)(2)(i) of this section or downstream protection values derived from the following equation to protect the downstream estuary. EPA's preset DPVs are listed in the Technical Support Document (TSD) for Florida's Inland Waters located at *www.regulations.gov,* Docket ID No. EPA–HQ–OW–2009–0569, and calculated for each stream reach as the average reach-specific concentration ($\bar{C}_i$) equal to the average reach-specific annual loading rate (L_i) divided by the average reach-specific flow ($\bar{Q}_i$) where:

$$\bar{C}_i = kL_{est}\frac{1}{Q_W F_i},$$

and where the terms are defined as follows for a specific or (i^{th}) stream reach:

$\bar{C}_i$ maximum flow-averaged nutrient concentration for a specific (the i^{th}) stream reach consistent with downstream use protection (*i.e.,* the DPV)
k fraction of all loading to the estuary that comes from the stream network resolved by SPARROW
L_{est} protective loading rate for the estuary, from all sources
$\bar{Q}_w$ combined average freshwater discharged into the estuary from the portion of the watershed resolved by the SPARROW stream network
F_i fraction of the flux at the downstream node of the specific (i^{th}) reach that is transported through the stream network and ultimately delivered to estuarine eceiving waters (*i.e.* Fraction Delivered).
DPVs may not exceed other criteria established for designated use protection in this section, nor result in an exceedance of other criteria for other water quality parameters established pursuant to Rule 62–302, F.A.C.

(B) The State may calculate alternative DPVs as above for $\bar{C}_i$ except that L_i is determined as a series of values for each reach in the upstream drainage area such that the sum of reach-specific incremental loading rates equals the target loading rate to the downstream water protective of downstream uses, taking into account that downstream reaches must reflect loads established for upstream reaches. Alternative DPVs may factor in additional nutrient attenuation provided by already existing landscape modifications or treatment systems, such as constructed wetlands or stormwater treatment areas. For alternative DPVs to become effective for Clean Water Act purposes, the State must provide public notice and opportunity for comment.

(C) To use an alternative technical approach of comparable scientific rigor to quantitatively determine the protective load to the estuary and associated protective stream concentrations, the State must go through the process for a Federal site-specific alternative criterion pursuant to paragraph (e) of this section.

(3) *Criteria for springs, spring runs, and clear streams.* The applicable nitrate-nitrite criterion is 0.35 mg/L as an annual geometric mean not to be surpassed more than once in a three year period, nor surpassed as a long-term average of annual geometric mean values. In addition to this nitrate-nitrite criterion, criteria identified in paragraph (c)(2) of this section are applicable to clear streams.

(4) *Criteria for south Florida canals.* The applicable criterion for chlorophyll *a,* total nitrogen (TN), and total phosphorus (TP) for canals within each respective canal geographic classification area is shown on the following table:

	Chlorophyll a (µg/L) [a]	Total phosphorus (TP) (mg/L) [a b]	Total nitrogen (TN) (mg/L) [a]
Canals	4.0	0.042	1.6

[a] Concentration values are based on annual geometric mean not to be surpassed more than once in a three-year period. In addition, the long-term average of annual geometric mean values shall not surpass the listed concentration values. (Duration = annual; Frequency = not to be surpassed more than once in a three-year period or as a long-term average).

[b] Applies to all canals within the Florida Department of Environmental Protection's South Florida bioregion, with the exception of canals within the Everglades Protection Area (EvPA) where the TP criterion of 0.010 mg/L currently applies.

(5) *Criteria for estuaries.* [Reserved]

(6) *Criteria for coastal waters.* [Reserved]

(d) *Applicability.*

(1) The criteria in paragraphs (c)(1) through (4) of this section apply to surface waters of the State of Florida designated as Class I (Potable Water Supplies) or Class III (Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife) water bodies pursuant to Rule 62–302.400, F.A.C., excluding wetlands, and apply concurrently with other applicable water quality criteria, except when:

(i) State regulations contain criteria which are more stringent for a particular parameter and use;

(ii) The Regional Administrator determines that site-specific alternative criteria apply pursuant to the procedures in paragraph (e) of this section;

(iii) The State adopts and EPA approves a water quality standards variance to the Class I or Class III designated use pursuant to § 131.13 that meets the applicable provisions of State law and the applicable Federal regulations at § 131.10; or

(iv) The State adopts and EPA approves restoration standards pursuant to paragraph (g) of this section.

(2) The criteria established in this section are subject to the State's general rules of applicability in the same way and to the same extent as are the other federally-adopted and State-adopted numeric criteria when applied to the same use classifications.

(i) For all waters with mixing zone regulations or implementation procedures, the criteria apply at the appropriate locations within or at the boundary of the mixing zones; otherwise the criteria apply throughout the water body including at the point of discharge into the water body.

(ii) The State shall use an appropriate design flow condition, where necessary, for purposes of permit limit derivation or load and wasteload allocations that is consistent with the criteria duration and frequency established in this section (*e.g.,* average annual flow for a criterion magnitude expressed as an average annual geometric mean value).

(iii) The criteria established in this section apply for purposes of determining the list of impaired waters pursuant to section 303(d) of the Clean Water Act, subject to the procedures adopted pursuant to Rule 62–303, F.A.C., where such procedures are consistent with the level of protection provided by the criteria established in this section.

(e) *Site-specific alternative criteria.*

(1) Upon request from the State, the Regional Administrator may determine that site-specific alternative criteria shall apply to specific surface waters in lieu of the criteria established in paragraph (c) of this section. Any such determination shall be made consistent with § 131.11.

(2) To receive consideration from the Regional Administrator for a determination of site-specific alternative criteria, the State must submit a request that includes proposed alternative numeric criteria and supporting rationale suitable to meet the needs for a technical support document pursuant to paragraph (e)(3) of this section.

(3) For any determination made under paragraph (e)(1) of this section, the Regional Administrator shall, prior to making such a determination, provide for public notice and comment on a proposed determination. For any such proposed determination, the Regional Administrator shall prepare and make available to the public a technical support document addressing the specific surface waters affected and the justification for each proposed determination. This document shall be made available to the public no later than the date of public notice issuance.

(4) The Regional Administrator shall maintain and make available to the public an updated list of determinations made pursuant to paragraph (e)(1) of this section as well as the technical support documents for each determination.

(5) Nothing in this paragraph (e) shall limit the Administrator's authority to modify the criteria in paragraph (c) of this section through rulemaking.

(f) *Effective date.* All criteria will be in effect [date 60 days after publication of final rule].

(g) *Restoration Water Quality Standards (WQS).* The State may, at its discretion, adopt restoration WQS to allow attainment of a designated use over phased time periods where the designated use is not currently attainable as a result of nutrient pollution but is attainable in the future. In establishing restoration WQS, the State must:

(1) Demonstrate that the designated use is not attainable during the time periods established for the restoration phases based on one of the factors identified in § 131.10(g)(1) through (6);

(2) Specify the designated use to be attained at the termination of the restoration period, as well as the criteria necessary to protect such use, provided that the final designated use and corresponding criteria shall include, at a minimum, uses and criteria that are consistent with CWA section 101(a)(2) ;

(3) Establish interim restoration designated uses and water quality criteria, that apply during each phase that will result in maximum feasible progress toward the highest attainable designated use and the use identified in paragraph (g)(2) of this section. Such interim uses and criteria may not provide for further degradation of a water body and may be revised prior to the end of each phase in accordance with §§ 131.10 and 131.20 and submitted to EPA for approval;

(4) Establish the time periods for each restoration phase that will result in maximum feasible progress toward the highest attainable use and the designated use identified in paragraph (g)(2) of this section, except that the sum of such time periods shall not exceed twenty years from the initial date of establishment of the restoration WQS under this section;

(5) Specify the spatial extent of applicability for all affected waters;

(6) Meet the requirements of §§ 131.10 and 131.20; and

(7) Include, in its State water quality standards, a specific provision that if the interim restoration designated uses and criteria established under paragraph (g)(3) of this section are not met during any phased time period established under paragraph (g)(4) of this section, the restoration WQS will no longer be applicable and the designated use and criteria identified in paragraph (g)(2) of this section will become applicable immediately.

(8) Provide that waters for which a restoration water quality standard is adopted will be recognized as impaired for the purposes of listing impaired waters under section 303(d) of the CWA until the use designated identified in paragraph (g)(2) of this section is attained.

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January 26, 2010

Part IV

Department of Agriculture

Animal and Plant Health Inspection Service

7 CFR Parts 301, 305, 318, et al.

Phytosanitary Treatments; Location of and Process for Updating Treatment Schedules; Final Rule

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301, 305, 318, 319, 330, and 352

[Docket No. APHIS-2008-0022]

RIN 0579-AC94

Phytosanitary Treatments; Location of and Process for Updating Treatment Schedules

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the phytosanitary treatment regulations in 7 CFR part 305 by removing the lists of approved treatments and treatment schedules from the regulations, while retaining the general requirements for performing treatments and certifying or approving treatment facilities. We are removing treatment schedules from other places where they are currently found in 7 CFR chapter III as well. Approved treatment schedules will instead be found in the Plant Protection and Quarantine Treatment Manual, which is available on the Internet. We are also establishing a new process to provide the public with notice and the opportunity to comment on changes to treatment schedules. Finally, we are harmonizing and combining the requirements for performing irradiation treatment for imported articles, articles moved interstate from Hawaii and U.S. territories, and articles moved interstate from an area quarantined for fruit flies. These changes will simplify and expedite our processes for adding, changing, and removing treatment schedules while continuing to provide for public participation in the process. These changes will also simplify our presentation of treatments to the public by consolidating all treatments into one document and eliminating redundant text from the regulations.

EFFECTIVE DATE: February 25, 2010.

FOR FURTHER INFORMATION CONTACT: Dr. Inder P. S. Gadh, Senior Risk Manager–Treatments, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 734-0627.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR chapter III are intended, among other things, to prevent the introduction or dissemination of plant pests and noxious weeds into or within the United States. Under the regulations, certain plants, fruits, vegetables, and other articles must be treated before they may be moved into the United States or interstate. The phytosanitary treatments regulations contained in part 305 of 7 CFR chapter III (referred to below as the regulations) set out standards and schedules for treatments required in parts 301, 318, and 319 of 7 CFR chapter III for fruits, vegetables, and other articles.

On May 12, 2009, we published in the **Federal Register** (74 FR 22318-22345, Docket No. APHIS-2008-0022) a proposal[1] to amend the regulations by removing the lists of approved treatments and treatment schedules from the regulations, while retaining the general requirements for performing treatments and certifying or approving treatment facilities. We proposed to remove treatment schedules from other places where they are currently found in 7 CFR chapter III as well, instead listing approved treatment schedules in the Plant Protection and Quarantine (PPQ) Treatment Manual, which is available on the Internet.[2] We also proposed to establish a new process to provide the public with notice and the opportunity to comment on changes to treatment schedules. Finally, we proposed to harmonize and combine the requirements for performing irradiation treatment for imported articles, articles moved interstate from Hawaii and U.S. territories, and articles moved interstate from an area quarantined for fruit flies.

We solicited comments concerning our proposal for 60 days ending July 13, 2009. We received 14 comments by that date. They were from nursery owners, academics, treatment facility operators, and representatives of State and foreign governments. They are discussed below by topic.

General Comments About the Treatment Requirements

As part of proposing to remove treatment schedules from 7 CFR chapter III, we proposed to move the general requirements for each type of treatment (chemical treatment, cold treatment, etc.) in 7 CFR part 305 to new locations within that part. We also proposed to make some minor changes to the existing treatment requirements.

One commenter suggested that we identify the common requirements for all treatments in the remaining provisions of 7 CFR part 305 and present them in an introductory section, setting out specific requirements for the individual types of treatments in later sections. The commenter also suggested that there is a common set of mitigations for fruit flies (packaging, product movement, and location of treatment facilities) that could be contained in a separate section and referenced in the appropriate treatment requirements. The commenter stated that such changes would provide more clarity in the specific treatment requirements while creating more certainty that all regulations governing treatment in part 305 are included without unnecessary repetition.

As we proposed to move the treatment requirements but not to make any significant changes to them, making large-scale revisions to those requirements would be outside the scope of this final rule. However, we appreciate the commenter's suggestion and will consider whether to make such changes in a future rulemaking.

One commenter stated that there are inconsistencies in how the terms "approve," "authorize," and "certify" are used in the existing treatment requirements. The commenter pointed out that proposed § 305.5(a), which contains requirements for chemical treatment facilities, is headed "Certified facility," while proposed § 305.6(a), which contains requirements for cold treatment facilities, is headed "Approval of treatment facilities." (Paragraph (a) of proposed § 305.8(a), which contains requirements for heat treatment facilities, is also headed "Certified facility.") The commenter stated that authorization of a quarantine treatment facility may be a complex process that could include licenses from local, State, or Federal regulatory agencies other than the Animal and Plant Health Inspection Service (APHIS), or a foreign national plant protection organization (NPPO), in the case of foreign facilities. The commenter stated that "certification" would be a more appropriate term for the process undertaken by APHIS or a foreign NPPO to ensure that a facility can consistently perform efficacious phytosanitary treatments, including post-treatment safeguarding and documentation.

Another commenter stated that proposed § 305.9(b), which referred to approval of an irradiation facility by APHIS, should instead refer to certification of the irradiation facility by APHIS.

We agree with the first commenter's general point that a distinction should be drawn between certification of a facility as capable of performing treatment and approval of that facility to

[1] To view the proposed rule and the comments we received, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2008–0022*).

[2] At (*http://www.aphis.usda.gov/import_export/plants/manuals/ports/treatment.shtml*).

perform treatments. In proposed § 305.9, which contained our proposed revision of the irradiation treatment requirements, we referred to certification of a facility as part of the process for approval of a facility; the other part of that process was completing the necessary compliance agreements or workplans. Our use of the term "certification" in proposed §§ 305.5 and 305.8 was consistent with the use in proposed § 305.9. To be consistent, this final rule refers to certification, rather than approval, of cold treatment facilities in § 305.6(a). For reasons mentioned earlier, we are not making the change suggested by the second commenter.

Definitions

We proposed to add or change the definitions of some terms in § 305.1.

The definition of *irradiation* has read: "The use of irradiated energy to kill or devitalize organisms." We proposed to replace the reference to "irradiated energy" with a reference to "ionized energy." We also proposed to replace the reference to "devitalize" in the definition of *irradiation* with a reference to "neutralize."

Two commenters suggested that we refer instead to "ionizing energy," as it is not the energy itself that is ionized; rather, the energy has the effect of ionizing atoms that are hit by the irradiation.

We agree with these commenters.

One commenter suggested that we add the word "pest" before the word "organisms" in the definition of *irradiation*.

The commenter did not provide any specific reason for making this change. We believe the suggested change is unnecessary, as any organism for which treatment is required will be a plant pest.

The International Plant Protection Convention's (IPPC) Glossary of Phytosanitary Terms[3] defines *irradiation* as "treatment with any type of ionizing radiation." As this definition is substantially similar to the proposed definition, and adopting the IPPC definition would make the regulations consistent with international standards, we are adopting the IPPC definition of *irradiation* in this final rule.

We proposed to add a definition of *neutralize* to reflect the fact that an effective irradiation treatment does not necessarily kill a plant pest. The proposed definition of *neutralize* read: "In the case of treatments other than irradiation, to kill a plant pest; in the case of irradiation, to prevent the establishment of the pest by killing it, sterilizing it, or preventing its development from an immature stage into an adult capable of emerging from its host, reproducing, or becoming established."

Two commenters recommended that the definition of *neutralize* make no distinction between irradiation and other treatments. One commenter noted that stating that treatments other than irradiation must result in the death of a plant pest does not provide options for other treatments that may be demonstrated to achieve a quarantine objective without causing mortality. For example, the commenter stated, the use of juvenile hormones as a treatment would prevent the development of larva into adults, while not killing the insect directly. In this case, the quarantine objective would be met, as the pest would not be able to reproduce and establish. While such treatments are not currently approved under the regulations or within the PPQ Treatment Manual, the commenter stated that, should such treatments be approved, it would be beneficial to allow for their subsequent inclusion within the PPQ Treatment Manual without having to amend the definition of *neutralize*.

We agree with these commenters and have removed the distinction between methods of treatment in the definition of *neutralize* in this final rule.

One commenter recommended that we remove the phrase "reproducing or becoming established" from the proposed definition of *neutralize* and instead refer to preventing a pest's development from an immature stage into an adult capable of emerging from its host or pupal case. As both non-emergence of adults and sterility of any life stage would effectively prevent a pest from reproducing and thereby becoming established, the commenter stated that highlighting that both of these are potentially acceptable outcomes would allow for the different biology of the range of pests for which a quarantine treatment might be applied.

We agree with the commenter's general point. However, with regard to the specific suggested language, "pupal case" would be inappropriately limiting, as a treatment that prevented development of pests in the larval stage would also be considered to be effective. Referring generally to preventing the development of a pest from an immature stage will encompass all of the potential successful outcomes. We have changed the proposed definition of *neutralize* accordingly.

With these changes, the definition of *neutralize* in this final rule reads: "To prevent the establishment of a plant pest by killing it, sterilizing it, preventing its development from an immature stage, or preventing its emergence from its host."

One commenter suggested that we add a definition of the term *monitor*, a term used in the general treatment requirements. The commenter stated that readers could be confused regarding whether *monitor* implies constant oversight of the treatment process or validation of the process at critical points in time.

The tenth edition of Merriam-Webster's Collegiate Dictionary defines "monitor" as "to keep watch of, track, or check." Other dictionaries provide similar definitions. This definition indicates that monitoring occurs while the treatment is occurring, but does not necessarily indicate constant oversight, which is consistent with the monitoring that officials authorized by APHIS perform for treatments. The IPPC Glossary of Phytosanitary Terms is consistent with the general definition, defining *monitoring* as "an official ongoing process to verify phytosanitary situations." We do not see a need to add a definition of *monitor* to the regulations, since our use of *monitor* is consistent with common understanding of the term and with international standards.

Notice-Based Process for Amending Treatments

Proposed § 305.3 set out a notice-based process for amending approved treatments. We received several comments supporting the use of such a process. One commenter noted that the addition, revision, and deletion of treatment schedules will directly affect the interests of trading partners and asked that APHIS provide notification of such changes to the World Trade Organization (WTO), with a sufficient period for comment, so that trading partners will be informed of these changes in a timely manner.

We plan to provide WTO notifications for notices published under this process, as we do for other trade-related notices. The notice will provide for a public comment period during which trading partners, as well as any other interested parties, may submit comments.

We are making two minor changes to the proposed provisions for the notice-based process. We are changing paragraph (b)(1)(iii) to refer to "articles" rather than "commodities," because

[3] The Glossary of Phytosanitary Terms is International Standard for Phytosanitary Measures (ISPM) Number 5. To view this and other ISPMs on the Internet, go to (*http://www.ippc.int/*) and click on the "Adopted Standards" link under the "Core activities" heading.

"articles" is the more commonly used general term.

In addition, proposed paragraph (b)(2) stated that treatments added or revised through the process we proposed to use for immediate changes to treatment schedules would be listed in a separate section of the PPQ Treatment Manual as having been added or revised through the immediate process described in proposed paragraph (b). However, in the current PPQ Treatment Manual, all of the treatments are listed by type (chemical treatment, cold treatment, etc.), which makes it easy for facility operators and others to see all the treatments that could potentially be employed at a specific treatment facility. Listing treatments approved through the immediate process in a separate section would make the PPQ Treatment Manual less user-friendly. Therefore, we have changed this provision in this final rule to indicate that treatment schedules that have been added to the PPQ Treatment Manual or revised under this process will be identified in the PPQ Treatment Manual as having been added or revised through the immediate process. The identification will make it clear that such treatments may be subject to change pending the comments we receive on the added or revised treatments.

Monitoring and Certification of Treatments

Section 305.3 has contained requirements for monitoring and certification of treatments. We proposed to move these requirements to § 305.4 and amend them.

Paragraph (b) of § 305.3 has required any treatment performed outside the United States to be monitored and certified by an inspector or an official from the NPPO of the exporting country. In proposed § 305.4(b), we proposed to require instead that any treatment performed outside the United States must be monitored and certified by an inspector or an official authorized by APHIS. We proposed this change to make this requirement consistent with the other requirements in part 305, which refer to officials authorized by APHIS rather than NPPO officials specifically.

Three commenters recommended that we not change the language currently in the regulations. Two commenters stated that the current regulations allow for APHIS to require preclearance, in which an APHIS inspector is present during the treatment and certifies that the treated commodity is free of quarantine pests, or certification by the NPPO; these commenters objected to what they perceived as the removal of the latter option.

One of these commenters further noted that international agreements recognize the NPPO as the official service that certifies consignments to have been disinfected or disinfested when being moved in international trade and provides the necessary endorsements on phytosanitary certificates. This commenter also stated that, unless a risk assessment demonstrates that preclearance is necessary, requiring preclearance imposes significant additional costs to exporters without increasing the quarantine security of consignments. This commenter recommended that we change the references to "an official authorized by APHIS" in other sections of the regulations to refer to officials from the NPPO of the exporting country, to be consistent with the original text of § 305.3.

The provisions we proposed allow everything that is allowed under the current regulations; we did not propose to remove any options. Officials authorized by APHIS would include any officials of a foreign NPPO who currently certify treatments for articles exported to the United States. They would also include third parties that conduct treatments. Currently, third-party officials authorized by APHIS who monitor treatments include operators of niger seed treatment facilities, operators of wood packing material treatment facilities, officials who monitor precooling treatment temperatures for cold treatment, and others. As such, the provisions we proposed are more inclusive than those currently in the regulations and reflect current treatment activities; reverting to the original text would remove some options for exporters. In addition, the provisions we proposed continue to allow for preclearance or certification of treatment by the NPPO, as appropriate. We have made no changes in response to these comments.

We also proposed to require treated commodities to be accompanied by a phytosanitary certificate issued by the NPPO of the exporting country certifying that treatment was conducted in accordance with APHIS regulations when monitoring or certification of a treatment involves an official authorized by APHIS. The current regulations require phytosanitary certificates when treatment is monitored and certified by an official of the exporting country. We proposed to retain the requirement that the phytosanitary certificate be presented to an inspector when the commodity is offered for entry into the United States.

One commenter stated that it is inappropriate for the NPPO of the exporting country to certify that a treatment has been conducted in accordance with APHIS regulations if the treatment is not monitored by an NPPO official. This commenter also noted that some treated commodities are not required to be accompanied by phytosanitary certificates.

When treatments are conducted in a foreign country, an NPPO official is always involved in monitoring the treatment. However, the commenter is correct that many articles whose importation is authorized only if they are treated are not required to be accompanied by a phytosanitary certificate; for example, regulated wood packaging material is required under § 319.40-3(b) to be treated before importation, but a stamp on the wood packaging indicates that the treatment has been conducted. Requirements that phytosanitary certificates accompany imported articles are typically contained in APHIS permits or in the regulations in 7 CFR part 319, which contains requirements for importing various articles; it is not necessary to include a separate phytosanitary certificate requirement for treated articles in part 305, especially when there would be many exceptions to that requirement. Therefore, we will not be finalizing the phytosanitary certificate-related provisions discussed earlier that we had proposed to include in § 305.4(b).

Chemical Treatment

We proposed to retain the requirements for chemical treatment in § 305.5, with minor changes. Paragraph (a) of § 305.5 requires fumigation treatment facilities to be certified by APHIS and to be inspected and recertified annually, or as often as APHIS directs, depending upon treatments performed, commodities handled, and operations conducted at the facility.

One commenter stated that, consistent with international agreements, the NPPO of the exporting country is capable of testing treatment facilities and certifying them as being capable of delivering the treatments required by the importing country. The commenter stated that this level of certification is not justified and presents a significant logistical and cost burden on treatment facilities, while not necessarily improving the quarantine security of consignments being exported to the United States. The commenter suggested that, at most, the certification be based on information submitted by the NPPO of the exporting country that is sufficient to demonstrate that the

facilities treating consignments are capable of meeting the requirements of § 305.5(a).

We did not propose to change the certification requirements for fumigation treatment facilities, and we would want to allow the public to comment on such a change before it was implemented. Therefore, we have made no changes to these provisions in response to this comment. However, we will consider the change the commenter suggested; if we determine that it is warranted, we will publish a proposed rule soliciting public comment on the change.

Cold Treatment

We proposed to move the requirements for cold treatment from § 305.15 to § 305.6, with minor changes. Paragraph (d)(6) of § 305.15, which is identical to proposed § 305.6(d)(6), has stated that only the same type of fruit in the same type of package may be treated together in a container; no mixture of fruits in containers may be treated.

One commenter suggested that we define "type." The commenter stated that a "type" of fruit, for the purpose of cold treatment, should be those fruits that are to be treated under the same schedule and that belong to the same genus. The commenter stated that different types of packaging might affect the delivery of cold treatment due to issues associated with the circulation of cold air, but different varieties of a particular species (such as Lisbon and Meyer lemons, or Washington Navel and Valencia oranges) do not affect treatment efficacy.

We agree with the commenter that varietal differences within a species do not affect the efficacy of cold treatment. However, we have determined that variations among species are significant enough that only fruit of the same species should be treated together using currently approved cold treatments; thus, we currently allow only fruit of the same species to be treated together. That said, we may determine in the future that a cold treatment schedule can be applied to fruit of the same genus. For that reason, we are not adding a definition of "type" to the regulations, but we are adding guidance on the meaning of "type" to the PPQ Treatment Manual. If we determine that a schedule could be used for fruit of the same genus, we would then be able to update the PPQ Treatment Manual to reflect that determination through the notice-based process we are adding to the regulations in this final rule.

This commenter also stated that, where the same treatment is applied and the same packaging type is used, the inclusion of both lemons and oranges in a single treatment container should not necessarily be considered to invalidate the treatment, provided the more stringent of the two available treatments is applied. The commenter stated that these fruit are closely related, have a similar structure, and would be predicted to have a similar rate of respiration that would influence the cold treatment and the development of any "hot spots" in the treatment enclosure.

We believe that the commenter's suggestion has some potential merit, but operational issues could make such a treatment process difficult to implement. However, we will consider the change the commenter suggested; if we determine that it is warranted, and that the operational issues associated with such a change could be adequately resolved, we will publish a proposed rule soliciting public comment on the change.

Heat Treatment

We proposed to move the requirements for heat treatment from § 305.20 to § 305.8, with minor changes. Paragraph (a)(1) of § 305.20, which is identical to proposed § 305.8(a)(1), has stated that a certified facility must have equipment that is capable of adequately circulating air or water (as relevant to the treatment).

One commenter asked whether the interpretation of "air" in the regulations would include steam or vapor. The commenter noted that three main forms of heat treatment are generally accepted, hot water immersion, high temperature forced air, and vapor heat treatment, and suggested that the text of this section include the term "air/vapor."

Steam and vapor are simply phases of water and, as used in treatments, are thus a mixture of air and water. As the regulations include requirements for circulation of air and water, we have determined that it is not necessary to further specify that facilities must be able to adequately circulate vapor.

Irradiation

The regulations have contained three sections that set out requirements for performing irradiation treatment: § 305.31, for irradiation treatment of imported regulated articles; § 305.32, for regulated articles moved interstate from areas quarantined for fruit flies; and § 305.34, for regulated articles moved interstate from Hawaii, Puerto Rico, and the U.S. Virgin Islands. The requirements in these sections were mostly similar, and some of them were identical. We proposed to consolidate and harmonize the existing irradiation requirements into one section that would set out irradiation requirements for all articles for which irradiation is an authorized treatment. We also proposed to make minor changes to the irradiation treatment requirements.

One commenter stated that the irradiation treatment regulations provide a much greater level of detail than the equivalent sections for other treatments. The commenter asked whether it is necessary to include this level of detail in the regulations, or whether it would be beneficial to include much of this detail in either the PPQ Treatment Manual or the other documentation specific to the irradiation treatment, such as the irradiation treatment framework equivalency workplan (FEWP). The commenter stated that reducing the level of detail in the regulations to be consistent with the other treatments would provide APHIS with more flexibility to amend the treatment requirements in the future, rather than having to complete rulemaking to do so.

The level of detail we proposed to include in the regulations reflects the level of detail that has been in the regulations. We did not propose to change the provisions of the irradiation regulations except as necessary to harmonize among the three sets of regulations and to correct errors and inconsistencies. Based on the comments we received, we will examine the irradiation regulations; if warranted, we will publish a separate proposal to amend them by removing detail and invite public comment on the proposal.

Two commenters stated that several requirements in the irradiation treatment regulations are related specifically to fruit flies. One of these commenters stated that the regulations contain requirements related to packaging, labeling, movement, and facility location that are specific to fruit flies and recommended that the regulations make it clear that irradiation is approved for many pests other than fruit flies.

The other commenter suggested that we review the proposed regulations and replace references to fruit flies with references to "pests of concern" where appropriate. This commenter specifically suggested that we change proposed § 305.9(c)(1)(i), which relates to compliance agreements for facilities treating imported articles in the United States. As proposed, this paragraph indicated that, in the facility compliance agreement, the facility operator must agree to comply with any additional requirements found necessary by APHIS to prevent the escape, prior to irradiation, of any fruit

flies that may be associated with the articles to be irradiated.

We agree with these commenters that the regulations should indicate that irradiation can be used to treat pests other than fruit flies, as irradiation is approved as a treatment for all pests of the class Insecta, other than pupae and adults of the order Lepidoptera. The proposed rule included several changes to the existing irradiation requirements to refer to pests of concern rather than to fruit flies specifically. In addition, we are taking the second commenter's suggestion to replace the reference to fruit flies in proposed § 305.9(c)(1)(i) with a reference to "pests of concern."

Some of the references to fruit flies in the regulations relate to the fact that, for articles moved within the continental United States, irradiation has only been approved as a treatment for articles moved interstate from areas quarantined for fruit flies. However, under this final rule, such facilities can treat any pest for which there is an approved dose in the PPQ Treatment Manual. We did not propose to expand the use of irradiation to facilities located in any areas quarantined for other pests in the proposal, although we may do so in the future.

Of the requirements cited by the first commenter, only the facility location requirements are specifically related to fruit flies. These are discussed in further detail in response to the next comment. However, the packaging, labeling, and movement requirements in the regulations all act as general safeguards against pests of concern, and the regulations as amended by this final rule reflect that.

Paragraph (a) of proposed § 305.9 contained the facility location requirements referred to earlier, which were taken from § 305.31(b). Under the proposed requirements, for articles that are imported or moved interstate from Hawaii or U.S. territories, irradiation facilities may be located in any State on the mainland United States except Alabama, Arizona, California, Florida, Kentucky, Louisiana, Nevada, New Mexico, South Carolina, Tennessee, Texas, and Virginia. In the States of Georgia, Mississippi, and North Carolina, irradiation facilities may only be located at the maritime ports of Gulfport, MS, or Wilmington, NC, or the airport of Atlanta, GA, and only if certain special conditions are met. Those conditions are designed to mitigate the risk of escape of fruit flies from the facility.

One commenter stated that no reason for excluding those listed States was included in the proposal and suggested that information on why these States are excluded be added to the rule. The commenter suggested that, if it is only Federal or State legislation that prevents the use of irradiation facilities in those States for imported commodities, the additional legislation could be referenced and the specific list of States included only in the PPQ Treatment Manual, rather than the regulations. This change, the commenter stated, would prevent the need for a formal rule change should States be added to or removed from the list.

The States listed in the regulations are States where fruit flies could become established if introduced into the United States. We exclude these States to safeguard against the possibility that, despite the container and movement restrictions in the irradiation treatment regulations, fruit flies could escape from regulated articles in the United States prior to treatment. This rationale was given in the final rule establishing the irradiation treatment regulations for imported articles, which was published in the **Federal Register** and effective on October 23, 2002 (67 FR 65016-65029, Docket No. 98-030-4). As the relevant climatic conditions in these States are not expected to change, removing this list from the regulations to facilitate future changes in the list is not necessary.

One commenter noted that the regulations provide conditions for the placement of a facility in the listed States at three specific ports of entry. The commenter suggested that these provisions should not be in the regulations but in the PPQ Treatment Manual. The commenter stated that this type of detail, which might change based on specific approvals, would be better handled within the PPQ Treatment Manual. Amendments to the list could follow the same notice-and-comment process we proposed for changes to the PPQ Treatment Manual.

We are considering rulemaking to establish conditions under which facilities could be located in the States listed in paragraph (a) of proposed § 305.9. Should we decide to promulgate rulemaking to establish such conditions, we would include the list of approved facilities in the Treatment Manual, as the commenter suggests. However, making such a change in this final rule would be beyond the scope of the proposed rule.

The irradiation treatment regulations require that an irradiation treatment facility be certified by APHIS. The proposal included this requirement in paragraph (d) of proposed § 305.9. For the initial certification of a facility, the irradiation treatment regulations require that an inspector make a personal inspection of the facility to determine whether it complies with the irradiation treatment facility requirements; the proposal included this requirement in paragraph (l) of proposed § 305.9.

One commenter stated that this level of certification is not justified and presents a significant logistical and cost burden on treatment facilities, while not necessarily improving the quarantine security of consignments being exported to the United States. The commenter stated that the key parts of the irradiation system are the dose mapping system and the routine dosimetry system. Because the regulations require these dosimetry systems to be compliant with the International Standards Organization/American Society for Testing and Materials (ISO/ASTM) standard or an equivalent standard recognized by APHIS, the commenter stated that there should be no need for specific certification visits by APHIS officials, provided that these standards are met. In this case, the commenter suggested, APHIS could use audit trails and certificates provided by accredited testing and certification laboratories to determine whether the treatment facility meets all the necessary requirements.

We have determined that, for the initial certification of a facility, it is necessary to conduct a personal inspection to ensure that the facility is in compliance with the ISO/ASTM standard. Audit trails and certificates provided by accredited testing and certification laboratories would not provide adequate assurance that the facility is in compliance with the standard. In addition, while we agree that the dose mapping and routine dosimetry systems are key components of irradiation treatment, the regulations include many other requirements that are necessary to ensure the phytosanitary security of treated articles, such as provisions to separate treated and untreated articles and to prevent the infestation of treated articles by quarantine pests after treatment. The facility's systems and processes to ensure compliance with these requirements also need to be verified by a personal inspection. We are making no changes in response to this comment.

The irradiation treatment regulations have referred to an increase or decrease in the amount of radioisotope as an event because of which recertification would be required. These events are found in the introductory text of paragraph (d) of proposed § 305.9. We proposed to add the word "significant" to better characterize the type of decrease that would require recertification, since radioisotope decreases in very small amounts during

treatment; otherwise, we did not propose to change this requirement.

Two commenters stated that increases in the amount of isotope should not necessitate recertification, and one stated that decreases in the amount of isotope should not either. Both commenters stated that if processes for maintaining the isotope have been established by the facility and approved by APHIS, changes in isotope should not require additional review by APHIS, except as necessary to confirm that the processes are being properly implemented.

As noted, the requirement for recertification in the event of a change in the amount of radioisotope has been found in all three sets of irradiation treatment facility provisions; we did not propose to change that requirement, other than making it more specific and thus more clear regarding what events require recertification. We have required recertification in the event of a change in the amount of radioisotope in order to verify that the radioisotope is at a proper level and treatment is being conducted in accordance with the ISO/ASTM standard and the facility's standard operating procedures. As discussed in more detail later in this document, it is especially important to verify that irradiation treatment is being properly conducted. We are making no changes in response to these comments.

However, we have determined that the proposed text could be more specific in describing what decreases warrant recertification. This final rule refers to a decrease in the amount of radioisotope for a reason other than natural decay, rather than to a significant decrease in the amount of radioisotope, as a reason for recertification. This reflects the intent of the proposed change more specifically and provides helpful additional information to the reader.

The irradiation treatment regulations require irradiation treatment to be monitored by an inspector. Monitoring will include inspection of treatment records and unannounced inspections of the facility by an inspector, and may include inspection of articles prior to or after irradiation. The proposal included these requirements in paragraph (e) of proposed § 305.9.

One commenter stated that such monitoring should not be required. The commenter stated that monitoring and inspection of treatment records can be performed by the NPPO of the exporting country. The commenter also stated that specific provisions for inspection prior to or after irradiation should not be included, as these should be performed during or after the issuance of a phytosanitary certificate by the NPPO of the exporting country.

We have determined that the current level of monitoring is appropriate. Verifying that irradiation treatment is being applied properly is particularly important because an inspector looking at treated articles themselves after treatment would have no practical way to determine, based on physical evidence from the commodity itself, that the articles have been irradiated. Irradiation leaves no residue and usually causes no discernable change to an article's color or texture. In addition, as discussed earlier in this document, an effective irradiation treatment may not kill all larvae, but instead might prevent adult emergence. In cases where an inspector at the port of entry encounters live larvae of the target pest in a shipment that is documented as irradiated, it is extremely important that the inspector be able to determine with full confidence that the article was properly treated according to APHIS requirements. We are making no changes in response to this comment.

One commenter stated that provisions in proposed paragraph (e) imply that an inspector need not necessarily be present at all times during treatment. However, the commenter stated, the requirement that treatment "must be monitored by an inspector" will lead to some confusion. The commenter suggested clarifying that an inspector may not be required on site during treatment.

The commenter's interpretation that monitoring may or may not be on site is correct. Immediately after the requirement the commenter cites, the regulations go on to explain that monitoring will include inspection of treatment records and unannounced inspections of the facility by an inspector, and may include inspection of articles prior to or after irradiation. If an unannounced visit is not being conducted, monitoring would only necessarily include a review of treatment records, which could be done off site. We believe the current language is sufficiently clear on this point.

To ensure the appropriate level of monitoring for facilities treating imported articles, the regulations in § 305.31(f) have required three agreements to be signed before articles can be imported in accordance with the irradiation treatment requirements: An FEWP, a facility preclearance workplan, and a trust fund agreement. We proposed to move these requirements to proposed § 305.9(e)(1). The only change we proposed was to limit the applicability of these requirements to facilities located in foreign countries, because ensuring that the irradiation treatment requirements are met when monitoring irradiation treatment in a foreign country involves an additional layer of complexity. Such monitoring requires us to work with foreign governments to ensure that all requirements are met, while monitoring the irradiation treatment within the United States of imported articles does not.

One commenter stated that, as specific details regarding the inspection of irradiated articles are included in the FEWP and the associated operational workplans, some of the specific details included in proposed paragraph (e) are not necessary. Similarly, the commenter suggested, as the extent of treatment oversight and monitoring would be defined in the FEWP, the text of proposed paragraph (e)(1)(iii), which contains the trust fund agreement requirements, could be simplified to remove specific references to the duties undertaken by APHIS in the exporting country.

The specific details the commenter cites are presented in the regulations as examples and not as exhaustive lists. For example, the requirements for the facility preclearance workplan that have been found in § 305.31(f)(2) and were proposed in § 305.9(e)(1)(ii) cite typical activities to be described in the workplan. These details provide helpful additional detail to the reader. We are making no changes in response to this comment.

Two commenters specifically addressed the FEWP. The regulations in § 305.31(f)(1), which we included in § 305.9(e)(1)(i) of the proposal, have required the NPPO of a country from which articles are to be imported into the United States in accordance with the irradiation treatment regulations to sign an FEWP with APHIS. In the FEWP, both the NPPO and APHIS will specify the following items for their respective countries:

- Citations for any requirements that apply to the importation of irradiated fruits and vegetables;
- The type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables into that country; and
- Any other conditions that must be met to allow the importation of irradiated fruits and vegetables into that country.

One commenter suggested that we revise these requirements to simply state that APHIS maintains the right to either deny the application for, or retract the approval of, an operational workplan for an irradiation facility if the

NPPO of the exporting country refuses to allow the importation of articles treated with irradiation. The commenter stated that such language would grant APHIS the legal right to determine equitable reciprocity and take appropriate action. The commenter stated that, in the case of domestic irradiation facilities that do not involve operational workplans with foreign NPPOs, reciprocity should not be required.

Another commenter requested that the requirement for the FEWP be removed. This commenter stated that the requirement for the FEWP was not based on science and thus constituted an unjustified barrier to trade. Because the requirement for the FEWP is not based on science, the commenter stated, APHIS is not authorized to impose such a requirement under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), which states that decisions affecting imports, exports, and interstate movement of regulated products shall be based on sound science. The commenter stated that the requirement for the FEWP was causing costly delays in attempts by the commenter's business to establish a facility for irradiating products for export to the United States, as the government of the country in which the facility is intended to be located is reluctant to take the steps that government has determined to be necessary to agree to an FEWP.

The FEWP was originally established in the irradiation regulations to support the equivalence principle of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures by clearly stating what legislative, regulatory, and other requirements must be met, and what monitoring and other activities must occur, for irradiated articles to be imported into the United States, or into the foreign country. We did not propose to change the provisions required to be included in the FEWP requirements.

The FEWP does not obligate the government of a country in which an irradiation facility is located to agree to any specific conditions for the use of irradiation as a phytosanitary measure, but merely to document the conditions under which irradiated articles can be imported into that country. We will provide clarification regarding this point to any country that is encountering difficulty in preparing an FEWP.

As noted above, we proposed to change the FEWP requirement so that it only applied to facilities located outside the United States. However, upon further considering the purpose of the FEWP, we have determined that the FEWP should continue to be required for all facilities treating imported articles, whether located outside or inside the United States, as the equivalence principle applies regardless of where imported articles are treated. Therefore, this final rule contains the FEWP requirement in a separate paragraph (e)(1) that applies to all facilities treating imported articles. Paragraph (e)(2) contains the remaining requirements for facilities located in foreign countries, and paragraph (e)(3) contains the requirements for facilities located in the United States; the latter paragraph refers to the FEWP requirement in paragraph (e)(1) for facilities located in the United States that are treating imported articles.

With regard to the first commenter's suggestion, the current FEWP provisions provide helpful additional specificity regarding what information about the exporting country's irradiation requirements needs to be conveyed in order for equivalence to be established. We are making no changes in response to this comment.

Two commenters specifically addressed the facility preclearance workplan. Prior to commencing importation into the United States of articles treated at a foreign irradiation facility, APHIS and the NPPO of the country from which articles are to be imported must jointly develop a preclearance workplan that details the activities that APHIS and the foreign NPPO will carry out in connection with each irradiation facility to verify the facility's compliance with the irradiation treatment requirements of this section. Typical activities to be described in this workplan may include frequency of visits to the facility by APHIS and foreign plant protection inspectors, methods for reviewing facility records, and methods for verifying that facilities are in compliance with the requirements for separation of articles, packaging, labeling, and other irradiation treatment requirements. This facility preclearance workplan will be reviewed and renewed by APHIS and the foreign NPPO on an annual basis.

Both commenters stated that preclearance should not be mandatory in all cases and that this specific workplan should be renamed. One commenter suggested calling it the "treatment facility workplan," and the other suggested the "irradiation facility workplan." The latter commenter stated that making this change would allow the flexibility to move from a preclearance program to one in which treatments are monitored by officials authorized by APHIS and the commodity is shipped with a phytosanitary certificate issued by the NPPO of the exporting country, given sufficient evidence regarding the success of the program.

We assume that the commenters are referring to "preclearance" as the activity in which APHIS inspectors are present in a foreign country and conduct inspections there prior to export of the inspected articles. That is how APHIS has commonly used the term in developing export programs for particular articles. However, the regulations for irradiation treatment facilities use "preclearance" in a different sense, to refer to preclearing treatments conducted at the facility. Because inspectors monitor treatment, there is no additional verification of the treatment that needs to be done at the port of entry, which is important given that there is no practical way to verify treatment, as discussed earlier.

However, articles treated in a precleared facility are not necessarily themselves precleared. Irradiated articles may be subject to mitigations besides irradiation treatment for certain pests. For example, litchi from Thailand are required by § 319.56-47 to be treated with irradiation for several insect pests and also to be inspected by the Thai NPPO and found to be free of the fungus *Peronophythora litchi*, which is not neutralized by irradiation treatment. Thus, litchi from Thailand are not precleared for entry into the United States, even though the irradiation treatment facility in which they are treated is precleared.

As discussed earlier, we need to retain the facility preclearance workplan in support of our monitoring requirements, given the difficulty associated with verifying that irradiation has been conducted properly. As the regulations refer specifically to a "facility preclearance workplan" and not a general preclearance workplan, we do not believe any further change is necessary to indicate that the preclearance discussed applies to treatments conducted in the facility and not necessarily to any articles treated by the facility.

The regulations have required in §§ 305.32(b) and 305.34(b)(3) that facilities located within the United States that carry out continual irradiation operations notify an inspector at least 24 hours before the date of operations, while facilities that carry out periodic irradiation operations must notify an inspector of scheduled operations at least 24 hours before scheduled operations. This requirement

was included in § 305.9(e)(2) of the proposal.

One commenter stated that what is meant by "continual" and "periodic" operations is not clear. The commenter suggested that we either clarify or simply change the proposed text from "...before the date of operations..." to "...before the date of initial operations....".

Re-examining the current requirements, we note that an inspector must be notified 24 hours before scheduled operations regardless of whether operations are continual or periodic. Therefore, as the commenter suggests, we have simplified this requirement in the final rule by eliminating distinctions between the two types of facilities.

In order to ensure that inspectors have adequate notice, we are also clarifying this provision to indicate that the notification must come at least 24 hours, excluding Saturday, Sunday, and Federal holidays, before scheduled operations, so that notification for irradiation that is scheduled for the next Monday does not arrive on a Saturday, a Sunday, or a Federal holiday, which are not standard business days for APHIS inspectors. The provision thus reads as follows in this final rule: "Facilities located within the United States must notify an inspector at least 24 hours (excluding Saturday, Sunday, and Federal holidays) before scheduled operations."

Paragraph (f) of proposed § 305.9 contained the packaging requirements of the irradiation treatment regulations. Paragraph (f)(2) contained requirements for packaging articles that are irradiated prior to arrival in the United States, prior to interstate movement from Hawaii or U.S. territories, and prior to movement from an area quarantined for fruit flies. The regulations for irradiation treatment of articles moved interstate from Hawaii and U.S. territories and from quarantined areas only allow irradiated articles to be packaged in insect-proof cartons. The regulations for irradiation treatment of imported articles allow either insect-proof cartons or noninsect-proof cartons to be used; if noninsect-proof cartons are used, the cartons must be stored immediately after irradiation in a room completely enclosed by walls or screening that completely precludes access by the pests of concern. If stored in noninsect-proof cartons in a room that precludes access by the pests of concern, prior to leaving the room, each pallet of cartons must be completely enclosed in polyethylene shrink wrap, or another solid or netting covering that completely precludes access to the cartons by the pests of concern. We proposed in § 305.9(f)(2)(i)(B) to allow the use of noninsect-proof cartons, subject to these conditions, for articles moved interstate from areas quarantined for fruit flies and from Hawaii and U.S. territories as well.

One commenter expressed uncertainty regarding whether the complete enclosure of the pallet in polyethylene shrink wrap or other covering should include the underside of the product and, if so, how one can shrink wrap all six sides of a pallet of product.

If the bottom of a pallet was insect-proof, we would not require the bottom of the pallet to be wrapped in polyethylene shrink wrap. The requirements for the use of noninsect-proof cartons are satisfied if access to the pallet is precluded by polyethylene shrink wrap or solid or netting covering.

One commenter stated that the requirement to wrap pallets of noninsect-proof cartons to prevent access by the pests of concern may be an appropriate safeguarding measure for articles transported by air, since the pallets are almost always exposed during the loading of the aircraft, but is not appropriate for maritime shipments, when the pallets of treated articles are loaded directly into the maritime container at the packing shed under adequate safeguards and subsequently sealed by the inspector or by another official authorized by APHIS. The commenter suggested that proposed § 305.9(f)(2)(i)(B) be reworded to make a distinction between requirements for air and maritime shipment, as is the case in other programs such as the program for hot water treatment of mango, and incorporated into the PPQ Treatment Manual rather than remain in the regulations.

The intent of this requirement is to prevent the treated articles from being reinfested by the pests of concern after treatment. As articles are exposed to potential pest infestation while they are being loaded into maritime containers, it is necessary to include a requirement to address this risk for maritime shipments as well. Although the mango hot water treatment program allows for such loading to be conducted without wrapping the mangoes, as noted earlier, it is much more difficult for an inspector at a port of entry to verify that an article has been treated with irradiation; in contrast, an inspector could easily determine that live fruit flies in mangoes that have been treated with hot water represented a failure of either the treatment or the post-treatment safeguarding and take appropriate action. We will consider whether providing for supervision of the maritime transloading process might adequately mitigate this risk; if we determine that it would, we would propose rulemaking to provide for such supervision, and take public comment on the change.

The regulations in §§ 305.31(g)(3)(ii), 305.32(c)(2), and 305.34(b)(4)(i)(B) have required each pallet-load of cartons containing irradiated articles to be wrapped before leaving the irradiation facility in one of the following ways:

- With polyethylene shrink wrap;
- With net wrapping; or
- With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

We included this requirement in § 305.9(f)(2)(ii) of the proposal.

One commenter stated an assumption that the concern of proposed paragraph (f)(2)(ii) is to ensure that pallets do not topple and that nontreated cartons cannot be inserted into pallets of treated articles. The commenter suggested that we substitute the word "secured" for the word "wrapped," as it more accurately describes the process when cornices and strapping are used to stabilize the pallet. The commenter also stated that requiring the strapping to pass and constrain each carton on the outside row of the pallet load exceeds current industry practices and would increase operational costs. The commenter suggested that the requirement be reworded to indicate that pallet loads should be secured by shrink wrap, netting, or strapping, without specifying how the strapping is to be applied.

We agree with the commenter's suggestions. Accordingly, § 305.9(f)(2)(ii) in this final rule uses the word "secured" rather than the word "wrapped," and does not include specific instructions on how to use strapping to secure the pallet.

In addition, the packaging requirements for sweetpotatoes moved interstate from Hawaii in § 318.13-25 are similar to the packaging requirements for irradiated articles, and contain identical requirements for wrapping pallets; we are also changing those requirements in this final rule, to be consistent with the changes we are making in the irradiation regulations.

The regulations in §§ 305.31(g)(3)(iii), 305.32(c)(3), and 305.34(b)(4)(i)(C) have required packaging to be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment. We included this requirement in § 305.9(f)(2)(ii) of the proposal.

One commenter stated that this level of detail does not need to be included in the regulations and that it would be

preferable for the regulations to only state that the packaging be labeled in such a way as to enable the necessary level of traceback. The inclusion of any identifying mark on the packaging that would permit APHIS to correlate the specific shipment to a treatment certificate, import permit, or other system would provide an equivalent level of traceback. As this detail already exists in the draft operational workplans, the commenter suggested that the principle of traceback be mentioned in paragraph (f)(2)(iii) without specifically requiring treatment facility codes, dates, or other information. As the operational workplans will be more easily amended than the regulations, the commenter stated that this option would allow APHIS to more easily take into consideration the specific systems in the exporting country.

We agree with the commenter's suggestion. In this final rule, paragraph (f)(2)(iii) specifies that packaging must be labeled in a manner that allows an inspector to determine treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment. This ensures that the information necessary to conduct traceback is available while allowing flexibility in providing that information. We will approve packaging to be used at a specific facility or for a specific commodity as part of the development of the operational workplan for the facility.

In addition, the labeling requirements for sweetpotatoes moved interstate from Hawaii in § 318.13-25 contain similar requirements for labeling cartons; we are also changing those requirements in this final rule, to be consistent with the changes we are making in the irradiation regulations.

One commenter suggested that APHIS change the wording ("Treated by irradiation" or "Treated with radiation") that must be stamped or pre-printed on each carton to indicate that the articles were irradiated to mitigate pest risks.

The wording is required by the Food and Drug Administration in its regulations at 21 CFR 179.26(c). We have no authority to make changes to those regulations.

Paragraph § 305.31(h) has required containers or vans that will transport treated commodities to be free of pests prior to loading the treated commodities. We proposed to include this requirement in § 305.9(g) and to make it applicable not only to facilities treating imported articles but to facilities treating articles moved interstate from Hawaii and U.S. territories and from areas quarantined for fruit flies as well.

One commenter requested clarification on this requirement. The commenter asked:

- Whether the intent was to prevent infestation by pests of concern or hitchhikers;
- Whether the requirement applies to product treated in an area where the pest(s) of concern are present, other areas, or both;
- If articles are treated in a domestic facility, why it is important that the container or van be pest-free after the product has been processed; and
- If the pests are not pests of concern, whether freedom would need to be established inside the container or outside the container.

The intent of the requirement is to prevent infestation by pests of concern. The requirement applies regardless of whether pests of concern are present in the area in which the articles are treated. Ensuring that containers are free of pests of concern is a basic safeguarding principle; for example, even if an irradiation facility was located in an area free of pests of concern, a container could have been used to carry infested articles, improperly cleaned, and brought to the irradiation facility to contain treated articles.

To clarify this requirement, we are changing proposed § 305.9(g) to refer specifically to pests of concern. We are also changing proposed § 305.9(g) to refer to "articles," rather than "commodities," as the term "articles" is used throughout § 305.9.

Proposed paragraph (l) of § 305.9 set out requirements for requesting certification and inspection of a facility. These requirements were taken from § 305.31(l); similar requirements are contained in §§ 305.32(g) and 305.34(c). Each of these paragraphs provides that, before the Administrator determines whether an irradiation facility is eligible for certification, an inspector will make a personal inspection of the facility to determine whether it complies with the regulations.

One commenter asked whether this paragraph also applied to recertification and, if so, suggested that we change this requirement to indicate that an inspector may make a personal inspection, rather than that an inspector will make a personal inspection. The commenter stated that a minor technical reason for recertification should not obligate APHIS to perform a personal inspection of the facility.

The requirements in proposed paragraph (l) apply only to the initial certification of a facility, not to recertification. We have added references to initial certification to paragraph (l) to make this more clear.

We are also changing paragraph (n) of proposed § 305.9, which informs the reader that the Department is not responsible for damage to treated articles and is taken from current §§ 305.31(n), 305.32(i), and 305.34(e). This paragraph refers to "listed plant pests," which we are updating to refer to "plant pests listed in the PPQ Treatment Manual." It also refers to fruits and vegetables being authorized for treatment; however, since articles other than fruits and vegetables are authorized for treatment, "articles" is a more appropriate term, and we are changing paragraph (n) accordingly.

Miscellaneous Changes

One commenter pointed out two typographical errors in the proposed rule:

- In proposed § 305.6(b), the text "and located in the area north of 39° longitude and east of 104° latitude" should read "and located in the area north of 39° latitude and east of 104° longitude".
- The section for quick freeze treatments was listed in the regulatory text of the proposed rule as being § 305.8. The commenter pointed out that the section number should be § 305.7.

We have corrected both of these errors in the final rule.

We are making two other miscellaneous changes to the proposed rule. We proposed to remove the chemical treatment schedules in the appendix to the subpart for imported fire ant (§§ 301.81 through 301.81-10), retaining only the systems approach for ensuring nursery freedom from imported fire ant in a new § 301.81-11. This systems approach refers to treatment at 180-day intervals. However, as treatments for the imported fire ant are added or changed, different intervals may be required for treatment. To add flexibility to the systems approach, we are changing the references to 180-day intervals in proposed § 301.81–11 to refer instead to "the specified number of days" and "the specified interval."

Proposed § 305.6(c) set out the requirements for cold treatment enclosures that have been found in § 305.15(c). Proposed paragraph (c)(2) indicated that such enclosures must maintain fruit pulp temperatures according to treatment schedules with no more than a 0.39 °C (0.7 °F) variation in temperature. This is related to a requirement for performing cold treatment that we proposed to include in § 305.6(d)(9), which requires fruit pulp temperatures to be maintained at

the temperature specified in the treatment schedule with no more than a 0.39 °C (0.7 °F) variation in temperature between two consecutive hourly readings. To make these requirements consistent and strengthen the connection between them, we are changing paragraph (c)(2) in this final rule to indicate that the cold treatment enclosure must maintain fruit pulp temperatures with no more than the specified variation between two consecutive hourly readings as well.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities.

APHIS is amending 7 CFR parts 301, 305, 318, and 319 to streamline the process for adding, revising, and removing treatment schedules and for authorizing the use of existing treatments for additional commodities. As required by the Regulatory Flexibility Act, we have evaluated the potential economic effects of this action on small businesses, small organizations, and small governmental jurisdictions

The regulations in 7 CFR chapter III are intended, among other things, to prevent the introduction or dissemination of plant pests and noxious weeds into or within the United States. Under the regulations, certain plants, fruits, vegetables, and other articles must be treated before they may be moved into the United States or interstate. The phytosanitary treatments regulations contained in part 305 set out standards and schedules for treatments required in parts 301, 318, and 319 for fruits, vegetables, and other articles.

APHIS is amending the phytosanitary treatment regulations in 7 CFR part 305 by removing the lists of approved treatments and treatment schedules from the regulations, while retaining the general requirements for performing treatments and certifying or approving treatment facilities. We are removing treatment schedules from other places where they are currently found in 7 CFR chapter III as well. Approved treatment schedules will instead be found in the PPQ Treatment Manual, which is available on the Internet. We are also establishing a new process to provide the public with notice and the opportunity to comment on changes to treatment schedules. Finally, we are harmonizing and combining the requirements for performing irradiation treatment for imported articles, articles moved interstate from Hawaii and U.S. territories, and articles moved interstate from an area quarantined for fruit flies. These changes will simplify and expedite our processes for adding, changing, and removing treatment schedules while continuing to provide for public participation in the process. These changes will also simplify our presentation of treatments to the public by consolidating all treatments into one document and eliminating redundant text from the regulations.

Eliminating the need for specific prior rulemaking for approving new treatments or treatment schedules or for revising existing ones under the notice-based process could result in considerable time savings. The rulemaking process is an inherently longer process than a notice-based process. Additionally, establishing a notice-based process for approving new treatments or treatment schedules will facilitate use of the already-established notice-based process for authorizing the importation of fruits and vegetables set out in § 319.56-4. Under § 319.56-4, APHIS can authorize the importation of fruits and vegetables via a notice-based process if APHIS makes the determination that the application of one or more designated phytosanitary measures is sufficient to mitigate the risk that plant pests or noxious weeds could be introduced into or disseminated within the United States via the imported fruits or vegetables. Currently, however, if one of the prescribed designated measures is a treatment that requires an amendment to part 305, rulemaking is still required to amend the lists of approved treatments or treatment schedules. Establishing a notice-based process to amend the lists of approved treatments or treatment schedules will streamline this process.

Consumers benefit from the opportunity to consume commodities from a variety of sources, foreign as well as domestic. Consumer expenditures for fruit and vegetables are growing faster than for any food group other than meats. In many cases, fruit and vegetable imports can occur only after those commodities have been treated to prevent the introduction or movement of plant pests. This final rule will allow treatments to be put in use more quickly when treatment changes are necessary and when existing treatments are applied to new commodities; treated products would become available to meet consumer demand sooner than at present. Treated imports supplement domestic supplies, especially of fresh products during the winter. Treatments also allow for movement of domestically produced products to markets around the country that otherwise would not occur. This movement results in increased choices for consumers. Even where new imports compete directly with domestic production, consumers benefit when increased competition results in lower prices.

Those entities most likely to be affected by the rule are domestic importers and producers of plants and plant products. The Small Business Administration (SBA) has established guidelines for determining which establishments are to be considered small. Import/export merchants, agents, and brokers are identified within the broader wholesaling trade sector. A firm primarily engaged in wholesaling is considered small if it employs not more than 100 persons. In 2002, more than 96 percent of fresh fruit and vegetable merchant wholesalers, more than 99 percent of grain and field bean merchant wholesalers, and more than 98 percent of flower and nursery stock wholesalers were considered small by SBA standards.[4] All types of farms are considered small if they have annual receipts of $0.75 million or less. In 2002, more than 99 percent of oilseed and grain farms, more than 99 percent of vegetable and melon farms, more than 99 percent of fruit and tree nut farms, more than 99 percent of greenhouse, nursery, and floriculture producers, and more than 99 percent of other crop farms were considered small by SBA standards.[5]

Treatments are applicable to a wide variety of products including fruits, vegetables, live plants, bulbs, seeds, grains, logs, lumber, and other plants and plant products in a wide variety of circumstances. Vast quantities of treated products move into and through the United States annually. The United States is among the top producers and

[4] 2002 Economic Census. Department of Commerce. U.S. Bureau of the Census. North American Industry Classification System (NAICS) Categories. 424480: Fresh fruit & Vegetable merchant wholesalers; 424510: Grain & field bean merchant wholesalers; 424930: Flower, nursery stock, and florists' supplies merchant wholesalers.

[5] 2002 Census of Agriculture. U.S. Department of Agriculture. National Agricultural Statistics Service. NAICS Categories. 1111: Oilseed & Grain farming; 1112: Vegetable and melon farming; 1113: Fruit and tree nut farming; 1114: Greenhouse, nursery & Floriculture production; and 1119: Other Crop farming.

consumers of plants and plant products. U.S. per-capita use of fruit and tree nuts totals nearly 300 pounds each year, ranking third in per-capita consumption of major food groups, next to dairy and vegetables. Oranges, apples, grapes, and bananas are the most popular fruit while almonds, pecans, and walnuts are the most preferred tree nuts. Annual per capita use of all vegetables and melons averaged 445 pounds during the first 5 years of the 2000s.

TABLE 1.—U.S. PRODUCTION VALUE OF SELECTED CROPS, 2004-2006 ($ MILLION)

Item	2004	2005	2006
Field and miscellaneous crops:			
Cotton, tobacco, sugar	8,674	8,702	8,648
Dry beans, peas, lentils	596	650	637
Grains, hay	47,367	45,225	57,209
Oilseeds	20,115	19,681	22,412
Potatoes, misc.	4,054	4,472	4,731
Fruit and nuts:			
Apples, pears	1,696	1,969	2,567
Berries	2,082	2,300	2,668
Citrus	2,485	2,303	2,738
Grapes	3,010	3,494	3,304
Nuts, other noncitrus	4,047	4,784	4,132
Stone fruit	1,243	1,462	1,563
Fresh vegetables:			
Brassica	1,111	1,118	1,225
Lettuce, spinach	2,062	2,108	2,635
Melons	728	873	877
Onions, peppers	1,300	1,501	1,674
Tomatoes	2,445	2,609	2,670
Other vegetables	1,430	1,599	1,619

In 2006, U.S. production of field and miscellaneous crops was valued at more than $93 billion, with grains, hay, and oilseeds accounting for the majority of this value. Fruit and tree nuts production was valued at about $17 billion. More than 63 percent of this production was in grapes, apples, almonds, oranges, and strawberries. Commercial vegetable production for the fresh market was valued at almost $11 billion, with tomatoes, lettuce, onions, broccoli, and sweet corn accounting for about 60 percent of this value.

Imports have become increasingly important for domestic consumption. Imports of plants and plant products have expanded rapidly over the past two decades, and include many new and newly traded commodities. In 2006, the United States imported approximately $5.8 billion in fresh fruits and tree nuts, about $2.5 billion in fresh vegetables, and about $1.5 billion in live plants and other plant products. Logs, lumber, and other timber product imports were valued at nearly $12 billion in 2006.

TABLE 2.—U.S. IMPORTS OF PLANTS AND PLANT PRODUCTS, 2004-2006 ($ MILLION)

Item	2004	2005	2006
Live plants, bulbs, etc.:			
Bulbs, tubers	208	208	208
Cut flowers, dried	706	709	768
Foliage	102	114	123
Other live plants	362	352	358

TABLE 2.—U.S. IMPORTS OF PLANTS AND PLANT PRODUCTS, 2004-2006 ($ MILLION)—Continued

Item	2004	2005	2006
Fruit and nuts:			
Bananas	1,102	1,134	1,201
Citrus, fresh	307	356	407
Coconuts, Brazil nuts	640	660	602
Dates, figs, pineapples	570	812	936
Grapes	743	980	953
Other fruits and nuts	1,127	1,174	1,297
Fresh vegetables:			
Cucumbers, gherkins	349	319	421
Melons	369	393	431
Onions, shallots	254	308	282
Tomatoes	1,054	1,075	1,234
Other vegetables	417	508	543
Logs, lumber, and other timber products:			
Wood in the rough	246	348	347
Wood, sawn or chipped	8,799	8,989	8,333
Other wood	2,894	3,074	3,235

While treatments are applicable to a wide variety of plants and plant products in a wide variety of circumstances, the changes in this final rule will not alter current treatment requirements, the manner in which new treatments are evaluated, or when and how treatments are ultimately used other than in emergency situations. The final rule will allow treatment changes to be implemented more rapidly and therefore facilitate the movement of treated products to meet consumer demand. These changes are not expected to significantly impact the total supply of plants and plant products in the United States. Therefore, we expect at most small effects on U.S. marketers and consumers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Has no retroactive effect and (2) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 305

Agricultural commodities, Chemical treatment, Cold treatment, Heat treatment, Imports, Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Quick freeze, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

7 CFR Part 330

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 352

Customs duties and inspection, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR chapter III as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.32-10, in the introductory text, the first sentence is revised to read as follows:

§ 301.32-10 Treatments.

Regulated articles may be treated in accordance with part 305 of this chapter to neutralize fruit flies. * * *

* * * * *

§ 301.50-5 [Amended]

■ 3. In § 301.50-5, paragraph (a)(1)(i) is amended by removing the citation "§ 301.50-10(d)" and adding the citation "§ 301.50-10(b)" in its place.

■ 4. Section 301.50-10 is amended as follows:

■ a. By revising paragraph (a) to read as set forth below.

■ b. By removing paragraphs (b) and (c).

■ c. By redesignating paragraph (d) as paragraph (b).

§ 301.50-10 Treatments and management method.

(a) Regulated articles may be treated in accordance with part 305 of this chapter to neutralize the pine shoot beetle.

* * * * *

§ 301.75-4 [Amended]

■ 5. In § 301.75-4, paragraph (d)(2)(i)(C) is amended by removing the words "§ 301-11(d) of this subpart" and adding the words "part 305 of this chapter" in their place; paragraphs (d)(2)(ii)(C), (d)(2)(ii)(D), (d)(2)(ii)(E), and (d)(4) are amended by removing the words "§ 301.75-11(d) of this subpart" and adding the words "part 305 of this chapter" in their place; and paragraph (d)(4) is amended by removing the words "§ 301.75-11(c) of this subpart" and adding the words "part 305 of this chapter" in their place.

§ 301.75-6 [Amended]

■ 6. In § 301.75-6, paragraphs (b)(5) and (b)(6) are amended by removing the words "§ 301.75-11(d)" and adding the words "part 305 of this chapter" in their place; and paragraph (b)(5) is amended by removing the words "§ 301.75-11(c)" and adding the words "part 305 of this chapter" in their place.

§ 301.75-7 [Amended]

■ 7. In § 301.75-7, paragraph (a)(2) is amended by removing the citation "§ 301.75-11(a)" and adding the words "part 305 of this chapter" in its place.

§ 301.75-8 [Amended]

■ 8. In § 301.75-8, paragraph (b) is amended by removing the words "§ 301.75-11(b) of this subpart" and adding the words "part 305 of this chapter" in their place.

§ 301.75-11 [Removed and Reserved]

■ 9. Section 301.75-11 is removed and reserved.

§ 301.81-4 [Amended]

■ 10. Section 301.81-4 is amended as follows:

■ a. In paragraph (a)(2)(iii), by removing the words "the methods and procedures prescribed in the Appendix to this subpart ("III. Regulatory Procedures")" and adding the words "part 305 of this chapter" in their place.

■ b. In paragraph (b), by removing the words "the methods and procedures prescribed in the Appendix to this subpart ("III. *Regulatory Procedures*"), or in accordance with the methods and procedures prescribed in".

■ 11. Section 301.81-5 is amended as follows:

■ a. In paragraph (a)(3)(ii), at the end of the paragraph, by removing the word "or".

■ b. In paragraph (a)(3)(iii), by removing the words "methods and procedures prescribed in the Appendix to this subpart ("III. Regulatory Procedures")." and adding the words "part 305 of this chapter; or" in their place.

■ c. By adding a new paragraph (a)(3)(iv) to read as set forth below.

§ 301.81-5 Issuance of a certificate or limited permit.

(a) * * *

(3) * * *

(iv) If the article is containerized nursery stock, it has been produced in accordance with § 301.81-11.

* * * * *

§ 301.81-6 [Amended]

■ 12. Section 301.81-6 is amended by removing the words "the "Imported Fire Ant Program Manual," as set forth in the appendix to this subpart" and adding the words "part 305 of this chapter" in their place.

■ 13. A new § 301.81-11 is added to read as follows:

§ 301.81-11 Imported fire ant detection, control, exclusion, and enforcement program for nurseries producing containerized plants.

This detection, control, exclusion, and enforcement program is designed to keep nurseries free of the imported fire ant and provides a basis to certify containerized nursery stock for interstate movement. Participating regulated establishments must be operating under a compliance agreement in accordance with § 301.81-6. Such compliance agreements shall state the specific requirements that a shipper agrees to follow to move plants in accordance with the requirements of the program. Certificates and a nursery identification number may be issued to the nursery for use on shipments of regulated articles.

(a) *Detection.* (1) Nursery owners are required to visually survey their entire premises twice monthly for the presence of imported fire ants.

(2) Nurseries participating in this program will be inspected by Federal or State inspectors at least twice per year. More frequent inspections may be necessary depending upon imported fire ant infestation levels immediately surrounding the nursery, the thoroughness of nursery management in maintaining imported-fire-ant-free premises, and the number of previous detections of imported fire ants in or near containerized plants. Inspections by Federal and State inspectors should be more frequent just before and during the peak shipping season. Any nurseries determined during nursery inspections to have imported fire ant colonies must be immediately treated to the extent necessary to eliminate the colonies.

(b) *Control.* Nursery plants that are shipped under this program must originate in a nursery that meets the requirements of this section. Nursery owners must implement a treatment program with registered bait and contact insecticides. The premises, including growing and holding areas, must be maintained free of the imported fire ant. As part of this treatment program, all exposed soil surfaces (including sod and mulched areas) on property where plants are grown, potted, stored, handled, loaded, unloaded, or sold must be treated in accordance with part 305 of this chapter at least once every 6 months. The first application must be performed early in the spring. Followup treatments with a contact insecticide in accordance with part 305 of this chapter must be applied to eliminate all remaining colonies.

(c) *Exclusion.* (1) For plants grown on the premises, treatment of soil or potting media in accordance with part 305 of

this chapter prior to planting is required.

(2) For plants received from outside sources, to prevent the spread into a nursery free of the imported fire ant by newly introduced, infested nursery plants, all plants must be:

(i) Obtained from nurseries that comply with the requirements of this section and that operate under a compliance agreement in accordance with § 301.81-6; or

(ii) Treated upon delivery in accordance with part 305 of this chapter, and within the specified number of days be either:

(A) Repotted in treated potting soil media;

(B) Retreated in accordance with part 305 of this chapter at the specified interval; or

(C) Shipped.

(d) *Enforcement.* (1) The nursery owner must maintain records of the nursery's surveys and treatments for the imported fire ant. These records must be made available to State and Federal inspectors upon request.

(2) If imported fire ants are detected in nursery stock during an inspection by a Federal or State inspector, issuance of certificates for movement will be suspended until necessary treatments are applied and the plants and nursery premises are determined to be free of the imported fire ant. A Federal or State inspector may declare a nursery to be free of the imported fire ant upon reinspection of the premises. This inspection must be conducted no sooner than 30 days after treatment. During this period, certification may be based upon treatments for plants in accordance with part 305 of this chapter.

(3) Upon notification by the department of agriculture in any State of destination that a confirmed imported fire ant infestation was found on a shipment from a nursery considered free of the imported fire ant, the department of agriculture in the State of origin must cease its certification of shipments from that nursery. An investigation by Federal or State inspectors will commence immediately to determine the probable source of the problem and to ensure that the problem is resolved. If the problem is an infestation, issuance of certification for movement on the basis of imported-fire-ant-free premises will be suspended until treatment and elimination of the infestation is completed. Reinstatement into the program will be granted upon determination that the nursery premises are free of the imported fire ant, and that all other provisions of this subpart are being followed.

(4) In cases where the issuance of certificates is suspended through oral notification, the suspension and the reasons for the suspension will be confirmed in writing within 20 days of the oral notification of the suspension. Any person whose issuance of certificates has been suspended may appeal the decision, in writing, within 10 days after receiving the written suspension notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

Appendix to Subpart—Imported Fire Ant [Removed]

■ 14. The Appendix to Subpart—Imported Fire Ant is removed.

§ 301.87-5 [Amended]

■ 15. In § 301.87-5, paragraph (a)(1)(i) is amended by removing the words "§ 301.87-10 of this subpart" and adding the words "part 305 of this chapter" in their place.

§ 301.87-10 [Removed and Reserved]

■ 16. Section 301.87-10 is removed and reserved.

§ 301.89-5 [Amended]

■ 17. In § 301.89-5, paragraphs (a)(2)(iii) and (b) are amended by removing the words "the methods and procedures prescribed in § 301.89-13" and adding the words "part 305 of this chapter" in their place.

§ 301.89-6 [Amended]

■ 18. In § 301.89-6, paragraph (a)(3)(iii) is amended by removing the words "methods and procedures prescribed in § 301.89-13" and adding the words "part 305 of this chapter" in their place.

§ 301.89-7 [Amended]

■ 19. Section 301.89-7 is amended by removing the citation "§ 301.89-13" and adding the words "part 305 of this chapter" in its place.

§ 301.89-12 [Amended]

■ 20. In § 301.89-12, paragraphs (a), (b), and (c) are amended by removing the citation "§ 301.89-13" and adding the words "part 305 of this chapter" in its place.

§ 301.89-13 [Removed and Reserved]

■ 21. Section 301.89-13 is removed and reserved.

§ 301.92-5 [Amended]

■ 22. In § 301.92-5, paragraph (a)(1)(i) is amended by removing the words "§ 301.92-10 or".

§ 301.92-10 [Removed and Reserved]

■ 23. Section 301.92-10 is removed and reserved.

■ 24. Part 305 is revised to read as follows:

PART 305—PHYTOSANITARY TREATMENTS

Sec.

305.1 Definitions.
305.2 Approved treatments.
305.3 Processes for adding, revising, or removing treatment schedules.
305.4 Monitoring and certification of treatments.
305.5 Chemical treatment requirements.
305.6 Cold treatment requirements.
305.7 Quick freeze treatment requirements.
305.8 Heat treatment requirements.
305.9 Irradiation treatment requirements.

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 305.1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any person delegated to act for the Administrator in matters affecting this part.

APHIS. The Animal and Plant Health Inspection Service, United States Department of Agriculture.

Cold treatment. Exposure of a commodity to a specified cold temperature that is sustained for a specific time period to kill targeted pests, especially fruit flies.

Dose mapping. Measurement of absorbed dose within a process load using dosimeters placed at specified locations to produce a one-, two-, or three-dimensional distribution of absorbed dose, thus rendering a map of absorbed-dose values.

Dosimeter. A device that, when irradiated, exhibits a quantifiable change in some property of the device that can be related to absorbed dose in a given material using appropriate analytical instrumentation and techniques.

Dosimetry system. A system used for determining absorbed dose, consisting of dosimeters, measurement instruments and their associated reference standards, and procedures for the system's use.

Fumigant. A gaseous chemical that easily diffuses and disperses in air and is toxic to the target organism.

Fumigation. Releasing and dispersing a toxic chemical in the air so that it reaches the target organism in a gaseous state.

Inspector. Any individual authorized by the Administrator of APHIS or the Commissioner of Customs and Border Protection, Department of Homeland Security, to enforce the regulations in this part.

Irradiation. Treatment with any type of ionizing radiation.

Methyl bromide. A colorless, odorless biocide used to fumigate a wide range of commodities.

Neutralize. To prevent the establishment of a plant pest by killing it, sterilizing it, preventing its development from an immature stage, or preventing its emergence from its host.

Plant Protection and Quarantine (PPQ). The Plant Protection and Quarantine program of APHIS.

PPQ Treatment Manual. The document that contains the treatment schedules that are approved for use under this part. The Treatment Manual is available on the Internet at (*http://www.aphis.usda.gov/import_export/plants/manuals/index.shtml*) or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Manuals Unit, 92 Thomas Johnson Drive, Suite 200, Frederick, MD 21702.

Quick freeze. A commercially acceptable method of quick freezing at subzero temperatures with subsequent storage and transportation at not higher than 20 °F. Methods that accomplish this are known as quick freezing, sharp freezing, cold pack, or frozen pack, but may be any equivalent commercially acceptable freezing method.

Section 18 of Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). An emergency exemption granted by the U.S. Environmental Protection Agency to Federal or State agencies authorizing an unregistered use of a pesticide for a limited time.

Vacuum fumigation. Fumigation performed in a gas-tight enclosure. Most air in the enclosure is removed and replaced with a small amount of fumigant. The reduction in pressure reduces the required duration of the treatment.

§ 305.2 Approved treatments.

(a) Certain commodities or articles require treatment, or are subject to treatment, prior to interstate movement within the United States or importation or entry into the United States. Treatment is required as indicated in parts 301, 318, and 319 of this chapter, on a permit, or by an inspector.

(b) Approved treatment schedules are set out in the PPQ Treatment Manual. Treatments may only be administered in accordance with the treatment requirements of this part and in accordance with treatment schedules found in the PPQ Treatment Manual.

(c) APHIS is not responsible for losses or damages incurred during treatment and recommends that a sample be treated first before deciding whether to treat the entire shipment.

§ 305.3 Processes for adding, revising, or removing treatment schedules.

(a) *Normal process for adding, revising, or removing treatment schedules.* Unless there is a need to immediately add, revise, or remove a treatment schedule, as provided in paragraph (b)(1) of this section, a treatment schedule may be added to the PPQ Treatment Manual, revised, or removed from the PPQ Treatment Manual as follows:

(1) *Notice of change to treatment schedule.* APHIS will publish in the **Federal Register** a notice describing the reasons we have determined that it is necessary to add, revise, or remove a treatment schedule and, if necessary, making available the new or revised treatment schedule as it would be added to the PPQ Treatment Manual. In our notice, we will provide for a public comment period on the new or revised treatment schedule or on the removal of the treatment schedule from the PPQ Treatment Manual.

(2) *Response to comments.* (i) APHIS will issue a notice after the close of the public comment period indicating that the treatment schedule specified in the initial notice will be added to the PPQ Treatment Manual, revised as described in the notice, or removed from the PPQ Treatment Manual if:

(A) No comments were received on the notice;

(B) The comments on the notice supported our action; or

(C) The comments on the notice were evaluated but did not change our determination that it is necessary to add, revise, or remove the treatment schedule, as described in the notice.

(ii) If the notice issued after the close of the public comment period indicates that a change will be made to the PPQ Treatment Manual, APHIS will make available a new version of the PPQ Treatment Manual that reflects the addition, revision, or removal of the particular treatment schedule.

(iii) If comments present information that causes us to determine that the change described in the notice is not appropriate, APHIS will issue a notice informing the public of this determination after the close of the comment period.

(b) *Process for immediately adding, revising, or removing treatment schedules.* Treatment schedules may be immediately added to the PPQ Treatment Manual, revised, or removed from the PPQ Treatment Manual under the circumstances described in paragraph (b)(1) of this section and in accordance with the process described in paragraphs (b)(2) and (b)(3) of this section.

(1) *Circumstances in which the immediate process may be used.* Treatment schedules may be immediately added to the PPQ Treatment Manual, revised, or removed from the PPQ Treatment Manual if any of the following circumstances apply:

(i) PPQ has determined that an approved treatment schedule is ineffective at neutralizing the targeted plant pest(s);

(ii) PPQ has determined that, in order to neutralize the targeted plant pest(s), the treatment schedule must be administered using a different process than was previously used;

(iii) PPQ has determined that a new treatment schedule is effective, based on efficacy data, and that ongoing trade in an article or articles may be adversely impacted unless the new treatment schedule is approved for use; or

(iv) The use of a treatment schedule is no longer authorized by the U.S. Environmental Protection Agency or by any other Federal entity.

(2) *Process for immediate change to treatment schedules.* If PPQ determines that one or more of the circumstances in paragraph (b)(1) of this section applies and that it is necessary to take immediate action, APHIS will publish in the **Federal Register** a notice describing the reasons we have determined that it is necessary to immediately add, revise, or remove a treatment schedule and, if necessary, making available the new or revised treatment schedule as it has been added to the PPQ Treatment Manual. Treatment schedules that have been added to the PPQ Treatment Manual or revised under this process will be identified in the PPQ Treatment Manual as having been added or revised through the immediate process described in this paragraph (b). The PPQ Treatment Manual will indicate that these treatment schedules are subject to change or removal based on public comment. In our notice, we will provide for a public comment period on the new or revised treatment schedule or on the removal of the treatment schedule from the PPQ Treatment Manual.

(3) *Response to comments.* (i) APHIS will issue a notice after the close of the public comment period affirming the action described in the initial notice if:

(A) No comments were received on the notice;

(B) The comments on the notice supported our action; or

(C) The comments on the notice were evaluated but did not change our determination that it was necessary to add, revise, or remove the treatment schedule, as described in the notice.

(ii) If the notice issued after the close of the public comment period indicates that the initial change to the PPQ Treatment Manual is affirmed, APHIS will make available a new version of the PPQ Treatment Manual that will reflect the addition, revision, or removal of the particular treatment schedule in the main body of the PPQ Treatment Manual.

(iii) If comments present information that causes us to determine that it is necessary to change a treatment schedule added to the PPQ Treatment Manual under this process or to further revise a treatment schedule that was revised under this process, APHIS will publish a notice in the **Federal Register** informing the public of this determination after the close of the comment period and will revise the treatment schedule accordingly.

(iv) If comments present information that causes us to determine that the change described in the initial notice was not appropriate, APHIS will publish a notice in the **Federal Register** informing the public of this determination after the close of the comment period and will, if necessary, remove the new or revised treatment schedule from the separate section of the PPQ Treatment Manual.

§ 305.4 Monitoring and certification of treatments.

(a) All treatments approved under part 305 are subject to monitoring and verification by APHIS.

(b) Any treatment performed outside the United States must be monitored and certified by an inspector or an official authorized by APHIS. During the entire interval between treatment and export, the consignment must be stored and handled in a manner that prevents any infestation by pests and noxious weeds.

§ 305.5 Chemical treatment requirements.

(a) *Certified facility.* The fumigation treatment facility must be certified by APHIS. Facilities are required to be inspected and recertified annually, or as often as APHIS directs, depending upon treatments performed, commodities handled, and operations conducted at the facility. In order to be certified, a fumigation facility must:

(1) Be capable of administering the required dosage range for the required duration and at the appropriate temperature, as specified in the treatment schedules in the PPQ Treatment Manual.

(2) Be adequate to contain the fumigant and be constructed from material that is not reactive to the fumigant.

(3) For vacuum fumigation facilities, be constructed to withstand required negative pressure.

(b) *Monitoring.* Treatment must be monitored by an official authorized by APHIS to ensure proper administration of the treatment, including that the correct amount of gas reaches the target organism and that an adequate number and placement of blowers, fans, sampling tubes, or monitoring lines are used in the treatment enclosure. An official authorized by APHIS approves, adjusts, or rejects the treatment.

(c) *Treatment procedures.* (1) To kill the pest, all chemical applications must be administered in accordance with an Environmental Protection Agency (EPA) approved pesticide label and the APHIS-approved treatment schedule prescribed in the PPQ Treatment Manual. If EPA cancels approval for the use of a pesticide on a commodity, then the treatment schedule prescribed in the PPQ Treatment Manual is no longer authorized for that commodity. If the commodity is not listed on the pesticide label and/or included in a Federal quarantine or crisis exemption in accordance with FIFRA section 18, then no chemical treatment is available.

(2) Temperature/concentration readings must be taken for items known to be sorptive or whose sorptive properties are unknown when treatment is administered in chambers at normal atmospheric pressure.

(3) Unless otherwise specified in the PPQ Treatment Manual, the volume of the commodity stacked inside the treatment enclosure must not exceed 2/3 of the volume of the enclosure. Stacking must be approved by an official authorized by APHIS before treatment begins. All commodities undergoing treatment must be listed on the label or authorized under Section 18 of FIFRA.

(4) Recording and measuring equipment must be adequate to accurately monitor the gas concentration, to ensure the correct amount of gas reaches the pests, and to detect any leaks in the enclosure. At least three sampling tubes or monitoring lines must be used in the treatment enclosure.

(5) An adequate number of blowers or fans must be used inside of the treatment enclosure to uniformly distribute gas throughout the enclosure. The circulation system must be able to recirculate the entire volume of gas in the enclosure in 3 minutes or less.

(6) The exposure period begins after all gas has been introduced.

(7) For vacuum fumigation: The vacuum pump must be able to reduce pressure in the treatment enclosure to 1-2 inches of mercury in 15 minutes or less.

§ 305.6 Cold treatment requirements.

(a) *Certification of treatment facilities.* All facilities or locations used for refrigerating fruits or vegetables in accordance with the cold treatment schedules in the PPQ Treatment Manual must be certified by APHIS. Recertification of the facility or carrier is required every 3 years, or as often as APHIS directs, depending on treatments performed, commodities handled, and operations conducted at the facility. In order to be certified, facilities and carriers must:

(1) Be capable of keeping treated and untreated fruits, vegetables, or other articles separate so as to prevent reinfestation of articles and spread of pests;

(2) Have equipment that is adequate to effectively perform cold treatment.

(b) *Places of treatment; ports of entry.* Precooling and refrigeration may be performed prior to, or upon arrival of fruits and vegetables in the United States, provided treatments are performed in accordance with applicable requirements of this section. Fruits and vegetables that are not treated prior to arrival in the United States must be treated after arrival only in cold storage warehouses approved by the Administrator and located in the area north of 39° latitude and east of 104° longitude or at one of the following ports: The maritime ports of Wilmington, NC; Seattle, WA; Corpus Christi, TX; and Gulfport, MS; Seattle-Tacoma International Airport, Seattle, WA; and Hartsfield-Atlanta International Airport, Atlanta, GA.

(c) *Cold treatment enclosures.* All enclosures, in which cold treatment is performed, including refrigerated containers, must:

(1) Be capable of maintaining the treatment temperature specified in the PPQ Treatment Manual before the treatment begins and holding fruit at or below the treatment temperature during the treatment.

(2) Maintain fruit pulp temperatures according to treatment schedules with no more than a 0.39 °C (0.7 °F) variation in temperature between two consecutive hourly readings.

(3) Be structurally sound and adequate to maintain required temperatures.

(d) *Treatment procedures.* (1) All material, labor, and equipment for cold treatment performed on a vessel must be provided by the vessel or vessel agent. An official authorized by APHIS monitors, manages, and advises in order to ensure that the treatment procedures are followed.

(2) Refrigeration must be completed in the container, compartment, or room in which it is begun.

(3) Fruit that may be cold treated must be safeguarded to prevent cross-contamination or mixing with other infested fruit.

(4) Fruit intended for in-transit cold treatment must be precooled to the temperature at which the fruit will be treated prior to beginning treatment. The in-transit treatment enclosure may not be used for precooling unless an official authorized by APHIS approves the loading of the fruit in the treatment enclosure as adequate to allow for fruit pulp temperatures to be taken prior to beginning treatment. If the fruit is precooled outside the treatment enclosure, an official authorized by APHIS will take pulp temperatures manually from a sample of the fruit as the fruit is loaded for in-transit cold treatment to verify that precooling was completed. If the pulp temperatures for the sample are 0.28 °C (0.5 °F) or more above the temperature at which the fruit will be treated, the pallet from which the sample was taken will be rejected and returned for additional precooling until the fruit reaches the treatment temperature. If fruit is precooled in the treatment enclosure, or if treatment is conducted at a cold treatment facility in the United States, the fruit must be precooled to the temperature at which it will be treated, as verified by an official authorized by APHIS, prior to beginning treatment.

(5) Breaks, damage, etc., in the treatment enclosure that preclude maintaining correct temperatures must be repaired before the enclosure is used. An official authorized by APHIS must approve loading of compartment, number and placement of temperature probes or sensors, and initial fruit temperature readings before beginning the treatment. Hanging decks and hatch coamings within vessels may not be used as enclosures for in-transit cold treatment without prior written approval from APHIS. Double-stacking of pallets is not allowed.

(6) Only the same type of fruit in the same type of package may be treated together in a container; no mixture of fruits in containers may be treated. A numbered seal must be placed on the doors of the loaded container and may be removed only at the port of destination by an official authorized by APHIS.

(7) Temperature recording devices used during treatment must be password-protected and tamperproof. The devices must be able to record the date, time, and sensor number and automatic and continuous records of the temperature during all calibrations and during treatment. Recording devices must be capable of generating temperature charts for verification by an inspector. If records of calibrations or treatments are found to have been manipulated, the vessel or container in which the treatment is performed may be suspended from conducting cold treatments until proper equipment is installed and an official authorized by APHIS has recertified it. APHIS' decision to recertify a vessel or container will take into account the severity of the infraction that led to suspension.

(8) A minimum of four temperature probes or sensors is required for vessel holds used as treatment enclosures. A minimum of three temperature probes or sensors is required for other treatment enclosures. An official authorized by APHIS will have the option to require that additional temperature probes or sensors be used, depending on the size of the treatment enclosure.

(9) Fruit pulp temperatures must be maintained at the temperature specified in the treatment schedule with no more than a 0.39 °C (0.7 °F) variation in temperature between two consecutive hourly readings. Failure to comply with this requirement will result in invalidation of the treatment unless an official authorized by APHIS can verify that the pulp temperature was maintained at or below the treatment temperature for the duration of the treatment.

(10) The time required to complete the treatment begins when all temperature probes reach the prescribed cold treatment schedule temperature. Refrigeration continues until the vessel arrives at the port of destination and the fruit is released for unloading by an inspector even though this may prolong the period required for the cold treatment.

(11) Temperatures must be recorded at intervals no longer than 1 hour apart. Gaps of longer than 1 hour will invalidate the treatment or indicate treatment failure unless an official authorized by APHIS can verify that the pulp temperature was maintained at or below the treatment temperature for the duration of the treatment.

(12) Cold treatment is not completed until so declared by an official authorized by APHIS or the certifying official of the foreign country; consignments of treated commodities may not be discharged until APHIS clearance has been fully completed, including review and approval of treatment record charts.

(13) Cold treatment of fruits in break bulk vessels or containers must be initiated by an official authorized by APHIS if there is not a treatment technician who has been trained to initiate cold treatments for either break bulk vessels or containers.

(14) An official authorized by APHIS may perform audits to ensure that the treatment procedures comply with the regulations in this section and that the treatment is administered in accordance with the treatment schedules in the PPQ Treatment Manual. The official authorized by APHIS must be given the appropriate materials and access to the facility, container, or vessel necessary to perform the audits.

(15) An inspector will sample and cut fruit from each consignment cold treated for Mediterranean fruit fly (Medfly) to monitor treatment effectiveness. If a single live Medfly in any stage of development is found, the consignment will be held until an investigation is completed and appropriate remedial actions have been implemented. If APHIS determines at any time that the safeguards contained in this section do not appear to be effective against the Medfly, APHIS may suspend the importation of fruits from the originating country and conduct an investigation into the cause of the deficiency.

(16) The cold treatments required for the entry of fruit are considered necessary for the elimination of plant pests, and no liability shall attach to the U.S. Department of Agriculture or to any officer or representative of that Department in the event injury results to fruit offered for entry in accordance with these instructions. In prescribing cold treatments of certain fruits, it should be emphasized that inexactness and carelessness in applying the treatments may result in injury to the fruit or its rejection for entry.

(e) *Monitoring.* Treatment must be monitored by an inspector to ensure proper administration of the treatment. An inspector must also approve the recording devices and sensors used to monitor temperatures and conduct an operational check of the equipment before each use and ensure sensors are calibrated. An inspector may approve, adjust, or reject the treatment.

(f) *Compliance agreements.* Facilities located in the United States must operate under a compliance agreement

with APHIS. The compliance agreement must be signed by a representative of the cold treatment facility and APHIS. The compliance agreement must contain requirements for equipment, temperature, circulation, and other operational requirements for performing cold treatment to ensure that treatments are administered properly. Compliance agreements must allow officials of APHIS to inspect the facility to monitor compliance with the regulations.

(g) *Workplans.* Facilities located outside the United States may operate in accordance with a bilateral workplan. The workplan, if and when required, must be signed by a representative of the cold treatment facility, the national plant protection organization (NPPO) of the country of origin, and APHIS. The workplans must contain requirements for equipment, temperature, circulation, and other operational requirements for performing cold treatment to ensure that cold treatments are administered properly. Workplans for facilities outside the United States may also include trust fund agreement information regarding payment of the salaries and expenses of APHIS employees on site. Workplans must allow officials of the NPPO and APHIS to inspect the facility to monitor compliance with APHIS regulations.

(h) *Additional requirements for treatments performed after arrival in the United States.*

(1) *Maritime port of Wilmington, NC.* Consignments of fruit arriving at the maritime port of Wilmington, NC, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) Bulk consignments (those consignments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(ii) Bulk and containerized consignments of fruit must be cold-treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(iii) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(iv) The cold treatment facility must remain locked during non-working hours.

(2) *Maritime port of Seattle, WA.* Consignments of fruit arriving at the maritime port of Seattle, WA, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) Bulk consignments (those consignments which are stowed and unloaded by the case or bin) of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(ii) Bulk and containerized consignments of fruit must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(iii) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(iv) The cold treatment facility must remain locked during non-working hours.

(v) Black light or sticky paper must be used within the cold treatment facility, and other trapping methods, including APHIS-approved fruit fly traps, must be used within the 4 square miles surrounding the cold treatment facility.

(vi) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

(3) *Airports of Atlanta, GA, and Seattle, WA.* Consignments of fruit arriving at the airports of Atlanta, GA, and Seattle, WA, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) Bulk and containerized consignments of fruit must arrive in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(ii) Bulk and containerized consignments of fruit arriving for cold treatment must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(iii) The cold treatment facility and APHIS must agree in advance on the route by which consignments are allowed to move between the aircraft on which they arrived at the airport and the cold treatment facility. The movement of consignments from aircraft to a cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(iv) Advance reservations for cold treatment space must be made prior to the departure of a consignment from its port of origin.

(v) The cold treatment facility must remain locked during non-working hours.

(vi) Black light or sticky paper must be used within the cold treatment facility, and other trapping methods, including APHIS-approved fruit fly traps, must be used within the 4 square miles surrounding the cold treatment facility.

(vii) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

(4) *Maritime ports of Gulfport, MS, and Corpus Christi, TX.* Consignments of fruit arriving at the ports of Gulfport, MS, and Corpus Christi, TX, for cold treatment, in addition to meeting all other applicable requirements of this section, must meet the following special conditions:

(i) All fruit entering the port for cold treatment must move in maritime containers. No bulk consignments (those consignments which are stowed and unloaded by the case or bin) are permitted.

(ii) Within the container, the fruit intended for cold treatment must be enclosed in fruit fly-proof packaging that prevents the escape of adult, larval, or pupal fruit flies.

(iii) All consignments of fruit arriving at the port for cold treatment must be cold treated within the area over which the U.S. Department of Homeland Security is assigned the authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws in force.

(iv) The cold treatment facility and APHIS must agree in advance on the route by which consignments are allowed to move between the vessel on which they arrived at the port and the cold treatment facility. The movement of consignments from vessel to cold treatment facility will not be allowed until an acceptable route has been agreed upon.

(v) Advance reservations for cold treatment space at the port must be made prior to the departure of a consignment from its port of origin.

(vi) Devanning, the unloading of fruit from containers into the cold treatment facility, must adhere to the following requirements:

(A) All containers must be unloaded within the cold treatment facility; and

(B) Untreated fruit may not be exposed to the outdoors under any circumstances.

(vii) The cold treatment facility must remain locked during non-working hours.

(viii) Black lights or sticky paper must be used within the cold treatment facility, and other trapping methods, including APHIS-approved fruit fly traps, must be used within the 4 square miles surrounding the cold treatment facility at the maritime port of Gulfport, MS, and within the 5 square miles surrounding the cold treatment facility at the maritime port of Corpus Christi, TX.

(ix) During cold treatment, a backup system must be available to cold treat the consignments of fruit should the primary system malfunction. The facility must also have one or more reefers (cold holding rooms) and methods of identifying lots of treated and untreated fruits.

(x) The cold treatment facility must have the ability to conduct methyl bromide fumigations on site.

(xi) The cold treatment facility must have contingency plans, approved by the Administrator, for safely destroying or disposing of fruit.

§ 305.7 Quick freeze treatment requirements.

Quick freeze treatment for fruits and vegetables imported into the United States or moved interstate from Hawaii or Puerto Rico must be conducted in accordance with §§ 319.56-12 or 318.13-13, respectively, of this chapter. The PPQ Treatment Manual indicates the fruits and vegetables for which quick freeze is an authorized treatment.

§ 305.8 Heat treatment requirements.

(a) *Certified facility*. The treatment facility must be certified by APHIS. Recertification is required annually, or as often as APHIS directs, depending upon treatments performed, commodities handled, and operations conducted at the facility. In order to be certified, a heat treatment facility must:

(1) Have equipment that is capable of adequately circulating air or water (as relevant to the treatment), changing the temperature, and maintaining the changed temperature sufficient to meet the treatment schedule parameters in the PPQ Treatment Manual.

(2) Have equipment used to record, monitor, or sense temperature, maintained in proper working order.

(3) Keep treated and untreated fruits, vegetables, or articles separate so as to prevent reinfestation and spread of pests.

(b) *Monitoring*. Treatment must be monitored by an official authorized by APHIS to ensure proper administration of the treatment. An official authorized by APHIS approves, adjusts, or rejects the treatment.

(c) *Compliance agreements*. Facilities located in the United States must operate under a compliance agreement with APHIS. The compliance agreement must be signed by a representative of the heat treatment facilities located in the United States and APHIS. The compliance agreement must contain requirements for equipment, temperature, water quality, circulation, and other measures for performing heat treatments to ensure that treatments are administered properly. Compliance agreements must allow officials of APHIS to inspect the facility to monitor compliance with the regulations.

(d) *Workplans*. Facilities located outside the United States must operate in accordance with a workplan. The workplan must be signed by a representative of the heat treatment facilities located outside the United States, the national plant protection organization of the country of origin (NPPO), and APHIS. The workplan must contain requirements for equipment, temperature, water quality, circulation, and other measures to ensure that heat treatments are administered properly. Workplans for facilities outside the United States must include trust fund agreement information regarding payment of the salaries and expenses of APHIS employees on site. Workplans must allow officials of the NPPO and APHIS to inspect the facility to monitor compliance with APHIS regulations.

(e) *Treatment procedures*. (1) Before each treatment can begin, an official authorized by APHIS must approve the loading of the commodity in the treatment container.

(2) Sensor equipment must be adequate to monitor the treatment, its type and placement must be approved by an official authorized by APHIS, and the equipment must be tested by an official authorized by APHIS prior to beginning the treatment. Sensor equipment must be locked before each treatment to prevent tampering.

(3) Fruits, vegetables, or articles of substantially different sizes must be treated separately; oversized fruit may be rejected by an official authorized by APHIS.

(4) The treatment period begins when the temperature specified by the treatment schedule has been reached. An official authorized by APHIS may abort the treatment if the facility requires an unreasonably long time to achieve the required temperature.

§ 305.9 Irradiation treatment requirements.

Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for any imported regulated article (i.e., fruits, vegetables, cut flowers, and foliage); for any regulated article moved interstate from Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Marianas Islands (referred to collectively, in this section, as Hawaii and U.S. territories); and for any berry, fruit, nut, or vegetable listed as a regulated article in § 301.32-2(a) of this chapter.

(a) *Location of facilities*. (1) Where certified irradiation facilities are available, an approved irradiation treatment may be conducted for any imported regulated article either prior to shipment to the United States or in the United States. For any regulated article moved interstate from Hawaii or U.S. territories, irradiation treatment may be conducted either prior to movement to the mainland United States or in the mainland United States. For articles that are imported or moved interstate from Hawaii or U.S. territories, irradiation facilities may be located in any State on the mainland United States except Alabama, Arizona, California, Florida, Kentucky, Louisiana, Nevada, New Mexico, South Carolina, Tennessee, Texas, and Virginia. In the States of Georgia, Mississippi, and North Carolina, irradiation facilities may only be located at the maritime ports of Gulfport, MS, or Wilmington, NC, or the airport of Atlanta, GA, and only if the following special conditions are met: The articles to be irradiated must be imported or moved interstate packaged in accordance with paragraph (f)(3) of this section; the irradiation facility and APHIS must agree in advance on the route by which shipments are allowed to move between the vessel on which they arrive and the irradiation facility; untreated articles may not be removed from their packaging prior to treatment under any circumstances; blacklight or sticky paper must be used within the irradiation facility, and other trapping methods, including APHIS-approved fruit fly traps, must be used within the 4 square miles surrounding the facility; and the facility must have contingency plans, approved by APHIS, for safely destroying or disposing of regulated articles. Prior to treatment, the fruits and vegetables to be irradiated may not move into or through any of the States listed in this paragraph, except that movement is allowed through Dallas/Fort Worth, TX, as an authorized stop for air cargo, or as a transloading location for shipments that arrive by air but that are subsequently transloaded into trucks for overland movement from

Dallas/Fort Worth into an authorized State by the shortest route.

(2) For articles that are moved interstate from areas quarantined for fruit flies, irradiation facilities may be located either within or outside of the quarantined area. If the articles are treated outside the quarantined area, they must be accompanied to the facility by a limited permit issued in accordance with § 301.32-5(b) of this chapter and must be moved in accordance with any safeguards determined to be appropriate by APHIS.

(b) *Approved facilities.* The irradiation treatment facility must be approved by APHIS. In order to be approved, a facility must fulfill the requirements in paragraphs (c) and (d) of this section.

(c) *Compliance agreements.* (1) *Irradiation facilities treating imported articles.* (i) *Compliance agreements with importers and facility operators for irradiation in the United States.* If irradiation of imported articles is conducted in the United States, both the importer and the operator of the irradiation facility must sign compliance agreements with APHIS. In the facility compliance agreement, the facility operator must agree to comply with any additional requirements found necessary by APHIS to prevent the escape, prior to irradiation, of any pests of concern that may be associated with the articles to be irradiated. In the importer compliance agreement, the importer must agree to comply with any additional requirements found necessary by APHIS to ensure the shipment is not diverted to a destination other than an approved treatment facility and to prevent escape of plant pests from the articles to be irradiated during their transit from the port of first arrival to the irradiation facility in the United States.

(ii) *Compliance agreement with irradiation facilities outside the United States.* If irradiation of imported articles is conducted outside the United States, the operator of the irradiation facility must sign a compliance agreement with APHIS and the national plant protection organization (NPPO) of the country in which the facility is located. In this agreement, the facility operator must agree to comply with the requirements of this section, and the NPPO of the country in which the facility is located must agree to monitor that compliance and to inform the Administrator of any noncompliance.

(2) *Irradiation facilities treating articles moved interstate from Hawaii and U.S. territories.* Irradiation facilities treating articles moved interstate from Hawaii and U.S. territories must complete a compliance agreement with APHIS as provided in § 318.13-3(d) of this chapter.

(3) *Irradiation facilities treating articles moved interstate from areas quarantined for fruit flies.* Irradiation facilities treating articles moved interstate from areas quarantined for fruit flies must complete a compliance agreement with APHIS as provided in § 301.32-6 of this chapter.

(d) *Certified facility.* The irradiation treatment facility must be certified by APHIS. Recertification is required in the event of an increase in the amount of radioisotope, a decrease in the amount of radioisotope for a reason other than natural decay, a major modification to equipment that affects the delivered dose, or a change in the owner or managing entity of the facility. Recertification also may be required in cases where a significant variance in dose delivery has been measured by the dosimetry system. In order to be certified, a facility must:

(1) Be capable of administering the minimum absorbed ionizing radiation doses specified in the PPQ Treatment Manual to the regulated articles;[1]

(2) Be constructed so as to provide physically separate locations for treated and untreated articles, except that articles traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence 6 or more feet high to prevent transfer of cartons, or some other means approved during certification to prevent reinfestation of articles and spread of pests.

(3) If the facility is to be used to treat imported articles and is located in the United States, the facility will only be certified if APHIS determines that regulated articles will be safely transported to the facility from the port of arrival without significant risk that plant pests will escape in transit or while the regulated articles are at the facility.

(e) *Monitoring and interagency agreements.* Treatment must be monitored by an inspector. This monitoring will include inspection of treatment records and unannounced inspections of the facility by an inspector, and may include inspection of articles prior to or after irradiation.

(1) *Irradiation facilities treating imported articles; irradiation treatment framework equivalency workplan.* The NPPO of a country from which articles are to be imported into the United States in accordance with this section must sign a framework equivalency workplan with APHIS. In this plan, both the NPPO and APHIS will specify the following items for their respective countries:

(A) Citations for any requirements that apply to the importation of irradiated fruits and vegetables;

(B) The type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables into that country; and

(C) Any other conditions that must be met to allow the importation of irradiated fruits and vegetables into that country.

(2) *Irradiation facilities located in foreign countries.* Facilities in foreign countries that carry out irradiation operations must notify the Director of Preclearance, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236, of scheduled operations at least 30 days before operations commence, except where otherwise provided in the facility preclearance workplan. To ensure the appropriate level of monitoring, before articles may be imported in accordance with this section, the following agreements must be signed, in addition to the irradiation treatment framework equivalency workplan required in paragraph (e)(1) of this section:

(i) *Facility preclearance workplan.* Prior to commencing importation into the United States of articles treated at a foreign irradiation facility, APHIS and the NPPO of the country from which articles are to be imported must jointly develop a preclearance workplan that details the activities that APHIS and the foreign NPPO will carry out in connection with each irradiation facility to verify the facility's compliance with the requirements of this section. Typical activities to be described in this workplan may include frequency of visits to the facility by APHIS and foreign plant protection inspectors, methods for reviewing facility records, and methods for verifying that facilities are in compliance with the requirements for separation of articles, packaging, labeling, and other requirements of this section. This facility preclearance workplan will be reviewed and renewed by APHIS and the foreign NPPO on an annual basis.

(ii) *Trust fund agreement.* Irradiated articles may be imported into the United States in accordance with this section only if the NPPO of the country in which the irradiation facility is located

[1] The maximum absorbed ionizing radiation dose and the irradiation of food is regulated by the Food and Drug Administration under 21 CFR part 179.

or a private export group has entered into a trust fund agreement with APHIS. That agreement requires the NPPO or the private export group to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection and treatment monitoring services at the irradiation facility during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement will describe the general nature and scope of APHIS services provided at irradiation facilities covered by the agreement, such as whether APHIS inspectors will monitor operations continuously or intermittently, and will generally describe the extent of inspections APHIS will perform on articles prior to and after irradiation. The agreement requires the NPPO or private export group to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the NPPO or the private export group to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more articles irradiated in that country may be imported into the United States. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the NPPO or the private export group or held on account until needed, at the option of the NPPO or the private export group.

(3) *Irradiation facilities located within the United States.* Facilities located within the United States must notify an inspector at least 24 hours (excluding Saturday, Sunday, and Federal holidays) before scheduled operations.[2] If the facility will be used to treat imported articles, the NPPO of the country from which the articles are to be imported into the United States in accordance with this section must also sign the irradiation treatment framework equivalency workplan required in paragraph (e)(1) of this section.

(f) *Packaging.* Articles that are irradiated in accordance with this section must be packaged in cartons in the following manner:

(1) Irradiated articles may not be packaged for shipment in a carton with nonirradiated articles.

(2) For all imported articles irradiated prior to arrival in the United States, all articles moved interstate from Hawaii or U.S. territories and irradiated prior to arrival in the mainland United States, and all regulated articles to be moved interstate from an area quarantined for fruit flies that are treated within the quarantined area:

(i) The fruits and vegetables must be packaged either:

(A) In insect-proof cartons that have no openings that will allow the entry of the pests of concern. The cartons must be sealed with seals that will visually indicate if the cartons have been opened. The cartons may be constructed of any material that prevents entry or oviposition (if applicable) by the pests of concern into the articles in the carton;[3] or

(B) In noninsect-proof cartons that are stored immediately after irradiation in a room completely enclosed by walls or screening that completely precludes access by the pests of concern. If stored in noninsect-proof cartons in a room that precludes access by the pests of concern, prior to leaving the room, each pallet of cartons must be completely enclosed in polyethylene shrink wrap, or another solid or netting covering that completely precludes access to the cartons by the pests of concern.

(ii) To preserve the integrity of treated lots, each pallet-load of cartons containing the fruits and vegetables must be secured before leaving the irradiation facility in one of the following ways:

(A) With polyethylene shrink wrap;

(B) With net wrapping; or

(C) With strapping.

(iii) Packaging must be labeled in a manner that allows an inspector to determine treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment.

(A) For imported articles that are treated prior to arrival in the United States, pallets that remain intact as one unit until entry into the United States may have one such label per pallet. Pallets that are broken apart into smaller units prior to or during entry into the United States, or that will be broken apart into smaller units after entry into the United States, must have the required label information on each individual carton.

(B) For articles moved interstate from Hawaii or U.S. territories that are treated prior to arrival in the mainland United States, pallets that remain intact as one unit until entry into the mainland United States may have one such label per pallet. Pallets that are broken apart into smaller units prior to or during entry into the mainland United States, or that will be broken apart into smaller units after entry into the mainland United States, must have the required label information on each individual carton.

(3) For all articles imported to be irradiated upon arrival in the United States, moved interstate from Hawaii or U.S. territories to be irradiated upon arrival in the mainland United States, or moved interstate from areas quarantined for fruit flies to be irradiated outside the quarantined area, the articles must be packed in cartons that have no openings that will allow the exit of the pests of concern and that are sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that prevents the pests of concern from exiting the carton. Cartons of untreated articles must be shipped in shipping containers sealed prior to their shipment with seals that will visually indicate if the shipping containers have been opened.

(g) *Containers or vans.* Containers or vans that will transport treated articles must be free of pests of concern prior to loading the treated articles.

(h) *Certification of treatment for articles treated outside the United States.* For each consignment treated in an irradiation facility outside the United States, a phytosanitary certificate, with the treatment section completed and issued by the NPPO, must accompany the consignment.

(i) *Dosage.* The regulated articles must receive the minimum absorbed ionizing radiation dose specified in the PPQ Treatment Manual.

(j) *Dosimetry systems at the irradiation facility.* (1) Dosimetry must indicate the doses needed to ensure that all the articles will receive the minimum dose prescribed.

(2) The absorbed dose, as measured using an accurate dosimetry system, must meet or exceed the absorbed dose for the pest(s) of concern required by the PPQ Treatment Manual.

(3) When designing the facility's dosimetry system and procedures for its operation, the facility operator must address guidance and principles from the International Standards Organization/American Society for

[2] Inspectors are assigned to local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories.

[3] If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Inspection and Technology, 1730 Varsity Drive, Suite 400, Raleigh, NC 27606-5202.

Testing and Materials standard[4] or an equivalent standard recognized by APHIS.

(k) *Records.* An irradiation processor must maintain records of each treated lot for 1 year following the treatment date, and must make these records available for inspection by an inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

(l) *Request for initial certification and inspection of facility.* Persons requesting initial certification of an irradiation treatment facility must submit the request for approval in writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Inspection and Technology, 1730 Varsity Drive, Suite 400, Raleigh, NC 27606-5202. The initial request must identify the owner, location, and radiation source of the facility, and the applicant must supply additional information about the facility construction, treatment protocols, and operations upon request by APHIS if APHIS requires additional information to evaluate the request. Before the Administrator determines whether an irradiation facility is eligible for certification, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of this section.

(m) *Denial and withdrawal of certification.* (1) The Administrator will withdraw the certification of any irradiation treatment facility upon written request from the irradiation processor.

(2) The Administrator will deny or withdraw certification of an irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying certification, the Administrator will inform the irradiation processor in writing of the reasons for the proposed action and provide the irradiation processor with an opportunity to respond. The Administrator will give the irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend certification pending final determination in the proceeding if he or she determines that suspension is necessary to prevent the spread of any dangerous insect. The suspension will be effective upon oral or written notification, whichever is earlier, to the irradiation processor. In the event of oral notification, written confirmation will be given to the irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(n) *Department not responsible for damage.* This treatment is approved to assure quarantine security against the plant pests listed in the PPQ Treatment Manual. From the literature available, the articles authorized for treatment under this section are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or monitored. Additionally, the Nuclear Regulatory Commission is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible for ensuring that irradiated foods are safe and wholesome for human consumption.

(Approved by the Office of Management and Budget under control numbers 0579-0155, 0579-0215, and 0579-0198)

PART 318—STATE OF HAWAII AND TERRITORIES QUARANTINE NOTICES

■ 25. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

§ 318.13-3 [Amended]

■ 26. In § 318.13-3, paragraph (b)(2) is amended by removing the words "approved in" and adding the words "approved under" in their place.

■ 27. Section 318.13-16 is amended as follows:

■ a. In the table in paragraph (a), by adding, under Hawaii, new entries for litchi and longan in alphabetical order to read as set forth below.

■ b. By adding a new paragraph (b)(1)(ii) to read as set forth below.

§ 318.13-16 Regulated articles allowed interstate movement subject to specified conditions.

(a) * * *

State, territory, or district of origin	Common name	Botanical name	Plant part(s)	Additional requirements
Hawaii				
*	*	*	*	*
	Litchi	*Litchi chinensis*	Fruit	(b)(1)(ii), (b)(3)(ii)
	Longan	*Dimocarpus longan*	Fruit	(b)(1)(ii), (b)(3)(ii)
*	*	*	*	*

(b) * * *

(1) * * *

(ii) May not be moved interstate into Florida. Cartons must be stamped "Not for movement into or distribution in FL."

* * * * *

■ 28. Section 318.13-22 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 318.13-22 Bananas from Hawaii.

* * * * *

(b) * * *

(1) The bananas are irradiated in accordance with part 305 of this chapter for the Mediterranean fruit fly (*Ceratitis capitata*), the melon fruit fly (*Bactrocera curcurbitae*), the Oriental fruit fly (*Bactrocera dorsalis*), and the green scale (*Coccus viridis*) and are inspected,

[4] Designation ISO/ASTM 51261-2002(E), "Standard Guide for Selection and Calibration of Dosimetry Systems for Radiation Processing," American Society for Testing and Materials, *Annual Book of ASTM Standards.*

after removal from the stalk, in Hawaii and found to be free of the banana moth (*Opogona sacchari* (Bojen)) by an inspector before or after undergoing irradiation treatment; or

(2) The bananas are irradiated in accordance with part 305 of this chapter for the Mediterranean fruit fly (*Ceratitis capitata*), the melon fruit fly (*Bactrocera curcurbitae*), and the Oriental fruit fly (*Bactrocera dorsalis*) and are inspected, after removal from the stalk, in Hawaii and found to be free of the green scale (*Coccus viridis*) and the banana moth (*Opogona sacchari* (Bojen)) before or after undergoing irradiation treatment.

* * * * *

■ 29. Section 318.13-25 is revised to read as follows:

§ 318.13-25 Sweetpotatoes from Hawaii.

Sweetpotatoes may be moved interstate from Hawaii in accordance with this section only if the sweetpotatoes meet the conditions in paragraph (a) or paragraph (b) of this section or if the sweetpotatoes are fumigated with methyl bromide in accordance with part 305 of this chapter.

(a) *Vapor heat treatment and inspection.* (1) The sweetpotatoes must be treated with vapor heat in accordance with part 305 of this chapter.

(2) The sweetpotatoes must be sampled, cut, and inspected and found to be free of the ginger weevil (*Elytrotreinus subtruncatus*). Sampling, cutting, and inspection must be performed under conditions that will prevent any pests that may emerge from the sampled sweetpotatoes from infesting any other sweetpotatoes intended for interstate movement in accordance with this section.

(3) The sweetpotatoes must be inspected and found to be free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*) and the Kona coffee-root knot nematode (*Meloidogyne konaensis*).

(4)(i) Sweetpotatoes that are treated in Hawaii must be packaged in the following manner:

(A) The cartons must have no openings that will allow the entry of the pests of concern and must be sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that prevents the entry of the pests of concern.[5]

(B) The pallet-load of cartons must be secured before it leaves the treatment facility in one of the following ways:

(*1*) With polyethylene sheet wrap;

(*2*) With net wrapping; or

(*3*) With strapping.

(C) Packaging must be labeled in a manner that allows an inspector to determine treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment.

(ii) Cartons of untreated sweetpotatoes that are moving to the mainland United States for treatment must be shipped in shipping containers sealed prior to interstate movement with seals that will visually indicate if the shipping containers have been opened.

(5)(i) *Certification on basis of treatment.* Certification shall be issued by an inspector for the movement of sweetpotatoes from Hawaii that have been treated in accordance with part 305 of this chapter and handled in Hawaii in accordance with this section.

(ii) *Limited permit.* A limited permit shall be issued by an inspector for the interstate movement of untreated sweetpotato from Hawaii for treatment on the mainland United States in accordance with this section.

(b) *Irradiation treatment and inspection.* (1) The sweetpotatoes must be treated with irradiation in accordance with part 305 of this chapter.

(2) Sweetpotatoes that are not treated with an irradiation dose approved to neutralize the ginger weevil (*Elytrotreinus subtruncatus*) must be sampled, cut, and inspected and found to be free of the ginger weevil by an inspector in Hawaii. Sampling, cutting, and inspection must be performed under conditions that will prevent any pests that may emerge from the sampled sweetpotatoes from infesting any other sweetpotatoes intended for interstate movement in accordance with this section.

(3)(i) To be certified for interstate movement under this paragraph, sweetpotato from Hawaii must be inspected in Hawaii and found free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*) and the Kona coffee-root knot nematode (*Meloidogyne konaensis*) by an inspector before undergoing irradiation treatment in Hawaii.

(ii) To be eligible for a limited permit under this section, untreated sweetpotato from Hawaii must be inspected in Hawaii and found free of the gray pineapple mealybug (*Dysmicoccus neobrevipes*) and the Kona coffee-root knot nematode (*Meloidogyne konaensis*) by an inspector.

(Approved by the Office of Management and Budget under control number 0579–0281)

■ 30. A new § 318.13-26 is added to read as follows:

§ 318.13-26 Breadfruit, jackfruit, fresh pods of cowpea, dragon fruit, mangosteen, and moringa pods from Hawaii.

(a) *Breadfruit and jackfruit.* (1) To be eligible for interstate movement, breadfruit and jackfruit from Hawaii must be treated with irradiation in accordance with part 305 of this chapter.

(2) To be certified for interstate movement, breadfruit and jackfruit from Hawaii must be inspected in Hawaii and found free of spiraling whitefly (*Aleurodicus dispersus*), inornate scale (*Aonidiella inornata*), red wax scale (*Ceroplastes rubens*), green scale (*Coccus viridis*), gray pineapple mealybug (*Dysmicoccus neobrevipes*), pink hibiscus mealybug (*Maconellicoccus hirsutus*), spherical mealybug (*Nipaecoccus viridis*), citrus mealybug (*Pseudococcus cryptus*), melon thrips (*Thrips palmi*), and signs of thrip damage before undergoing irradiation treatment in Hawaii at a dose approved to neutralize fruit flies. Fruit treated for fruit flies also must either receive a post-harvest dip in accordance with part 305 of this chapter to treat external feeders or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. Post-treatment inspection in Hawaii is not required if the fruit undergoes irradiation treatment at a dose approved to neutralize all plant pests of the class *Insecta*, except pupae and adults of the order Lepidoptera. Regardless of irradiation dose, the fruit must be free of stems and leaves and must originate from an orchard that was previously treated with a fungicide appropriate for the fungus *Phytophthora tropicalis* during the growing season and the fruit must be inspected prior to harvest and found free of the fungus or, after irradiation treatment, must receive a post-harvest fungicidal dip appropriate for *Phytophthora tropicalis*.

(3) To be eligible for a limited permit, breadfruit and jackfruit from Hawaii must be free of stems and leaves and must originate from an orchard that was previously treated with a fungicide appropriate for the fungus *Phytophthora tropicalis* during the growing season

[5] If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Science and Technology, 1730 Varsity Drive, Suite 400, Raleigh, NC 27606.

and the fruit must be inspected prior to harvest and found free of the fungus or, after irradiation treatment, must receive a post-harvest fungicidal dip appropriate for *Phytophthora tropicalis*.

(b) *Fresh pods of cowpea.* (1) To be eligible for interstate movement, fresh pods of cowpea and its relatives from Hawaii must be treated with irradiation in accordance with part 305 of this chapter.

(2) To be certified for interstate movement, fresh pods of cowpea and its relatives from Hawaii must be inspected in Hawaii and found free of the cassava red mite (*Oligonychus biharensis*) and adults and pupae of the order Lepidoptera before undergoing irradiation treatment. The pods must be free of stems and leaves.

(3) To be eligible for a limited permit, fresh pods of cowpea and its relatives from Hawaii must be free of stems and leaves and must be inspected in Hawaii and found free of the cassava red mite (*Oligonychus biharensis*) and adults and pupae of the order Lepidoptera.

(c) *Dragon fruit.* To be certified for interstate movement, dragon fruit from Hawaii presented for inspection must have the sepals removed and must be inspected in Hawaii and found free of gray pineapple mealybug (*Dysmicoccus neobrevipes*), pink hibiscus mealybug (*Maconellicoccus hirsutus*), and citrus mealybug (*Pseudococcus cryptus*) before undergoing irradiation treatment in Hawaii at a dose approved to neutralize fruit flies. Fruit treated for fruit flies also must either receive a post-harvest dip in accordance with part 305 of this chapter to treat external feeders or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. Post-treatment inspection in Hawaii is not required if the fruit undergoes irradiation treatment at a dose approved to neutralize all plant pests of the class *Insecta*, except pupae and adults of the order Lepidoptera. Regardless of irradiation dose, the fruit must be free of stems and leaves.

(d) *Mangosteen.* To be certified for interstate movement, mangosteen from Hawaii must have the sepals removed and must be inspected in Hawaii and found free of gray pineapple mealybug (*Dysmicoccus neobrevipes*), pink hibiscus mealybug (*Maconellicoccus hirsutus*), citrus mealybug (*Pseudococcus cryptus*), and *Thrips florum* before undergoing irradiation treatment in Hawaii at a dose approved to neutralize fruit flies. Fruit treated for fruit flies also must either receive a post-harvest dip in accordance with part 305 of this chapter to treat external feeders or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. Post-treatment inspection in Hawaii is not required if the fruit undergoes irradiation treatment at a dose approved to neutralize all plant pests of the class *Insecta*, except pupae and adults of the order Lepidoptera. Regardless of irradiation dose, the fruit must be free of stems and leaves.

(e) *Melon.* To be certified for interstate movement, melon from Hawaii must be inspected in Hawaii and found free of spiraling whitefly (*Aleurodicus dispersus*) before undergoing irradiation treatment in Hawaii at a dose approved to neutralize fruit flies. Fruit treated for fruit flies also must either receive a post-harvest dip in accordance with part 305 of this chapter to treat external feeders or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. Post-treatment inspection in Hawaii is not required if the fruit undergoes irradiation treatment at a dose approved to neutralize all plant pests of the class *Insecta*, except pupae and adults of the order Lepidoptera. Regardless of irradiation dose, melons must be washed to remove dirt and must be free of stems and leaves.

(f) *Moringa pods.* To be certified for interstate movement, moringa pods from Hawaii must be inspected in Hawaii and found free of spiraling whitefly (*Aleurodicus dispersus*), inornate scale (*Aonidiella inornata*), green scale (*Coccus viridis*), and citrus mealybug (*Pseudococcus cryptus*) before undergoing irradiation treatment in Hawaii at a dose approved to neutralize fruit flies. Fruit treated for fruit flies also must either receive a post-harvest dip in accordance with part 305 of this chapter to treat external feeders or originate from an orchard or growing area that was previously treated with a broad-spectrum insecticide during the growing season and a pre-harvest inspection of the orchard or growing area found the fruit free of any surface pests as prescribed in a compliance agreement. Post-treatment inspection in Hawaii is not required if the fruit undergoes irradiation treatment at a dose approved to neutralize all plant pests of the class *Insecta*, except pupae and adults of the order Lepidoptera.

§ 318.47-3 [Amended]

■ 31. In § 318.47-3, paragraph (a) is amended by adding the words "in accordance with part 305 of this chapter" after the word "origin".

PART 319—FOREIGN QUARANTINE NOTICES

■ 32. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 33. In § 319.8-23, paragraph (a)(1) is revised to read as follows:

§ 319.8-23 Treatment.

(a)(1) Vacuum fumigation as required in this subpart must be conducted in accordance with part 305 of this chapter.

* * * * *

§ 319.28 [Amended]

■ 34. Section 319.28 is amended as follows:

■ a. In paragraph (b)(5), by adding the words "treated in accordance with part 305 of this chapter" after the words "fumigated with methyl bromide"; and by removing the second sentence.

■ b. In paragraphs (b)(7)(i) and (b)(7)(ii), by removing the words "paragraph (b)(5) of this section" and adding the words "part 305 of this chapter" in their place.

§ 319.37-13 [Amended]

■ 35. In § 319.37-13, paragraph (c) is amended by removing the words "the Plant Protection and Quarantine Treatment Manual" and adding the words "7 CFR part 305" in their place.

■ 36. In § 319.40-3, paragraph (b)(1) is revised to read as follows:

§ 319.40-3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.

* * * * *

(b) * * *

(1) The wood packaging material must have been treated in accordance with part 305 of this chapter.

* * * * *

■ 37. Section 319.40-5 is amended as follows:

■ a. In paragraph (b)(1)(i)(C), by removing the citation "§ 319.40-7(f)(1)" and adding the words "part 305 of this chapter" in its place.

■ b. In paragraph (b)(1)(i)(D), by removing the citation "§ 319.40-7(d)"

and adding the words "part 305 of this chapter" in its place.
■ c. In paragraph (b)(1)(iii)(A), by removing the citations "§ 319.40-7(c)" and "§ 319.40-7(d)" and adding the words "part 305 of this chapter" in their place.
■ d. In paragraph (b)(1)(iii)(C), by removing the citations "§ 319.40-7(c)", "§ 319.40-7(d)", and "§ 319.40-7(f)(3)" each time they occur and adding the words "part 305 of this chapter" in their place.
■ e. In paragraph (b)(2)(i), by removing the citation "§ 319.40-7(f)(2)" and adding the words "part 305 of this chapter" in its place.
■ f. In paragraph (b)(2)(ii), by removing the citations "§ 319.40-7(c)" and "§ 319.40-7(d)" and adding the words "part 305 of this chapter" in their place.
■ g. In paragraph (c)(2), by removing the citation "§ 319.40-7(f)(1)" and adding the words "part 305 of this chapter" in its place.
■ h. In paragraph (d), by removing the citation "§ 319.40-7(f)" and adding the words "part 305 of this chapter" in its place.
■ i. In paragraph (f), by removing the citation "§ 319.40-7(c)" and adding the words "part 305 of this chapter" in its place.
■ j. By revising paragraph (l)(3) to read as set forth below.
■ k. In paragraph (m)(2)(iv)(A)(*1*), by removing the citation "319.40-7(f)" and adding the words "part 305" in its place.
■ l. In paragraph (m)(2)(iv)(A)(*4*), by removing the citation "§ 319.40-6" and adding the words "7 CFR part 305" in its place.
■ m. In paragraph (n)(1)(ii), by removing the citation "§ 319.40-7(c)" and adding the words "part 305 of this chapter" in its place.

§ 319.40-5 Importation and entry requirements for specific articles.

* * * * *

(l) * * *

(3) Are fumigated in accordance with part 305 of this chapter prior to arrival in the United States.

* * * * *

§ 319.40-6 [Amended]

■ 38. Section 319.40-6 is amended as follows:
■ a. In paragraph (a), by removing the citation "§ 319.40-7(c)" and adding the words "part 305 of this chapter" in their place.
■ b. In paragraphs (b)(1) introductory text, (b)(1)(i), (b)(1)(ii), (b)(2)(ii), (c)(2)(i)(B), (c)(2)(iii), (c)(2)(iv), and (d), by removing the citation "§ 319.40-7(c)" each time it occurs and adding the words "part 305 of this chapter" in its place; and by removing the citation "§ 319.40-7(d)" each time it occurs and adding the words "part 305 of this chapter" in its place.
■ c. In paragraph (c)(1)(i)(A), by removing the citation "§ 319.40-7(e)" each time it occurs and adding the words "part 305 of this chapter" in its place.
■ d. In paragraphs (c)(2)(i)(B), (c)(2)(iii), (c)(2)(iv), and (d), by removing the citation "§ 319.40-7(f)(3)" each time it occurs and adding the words "part 305 of this chapter" in its place.

■ 39. Section 319.40-7 is amended as follows:
■ a. By removing paragraphs (c) through (f).
■ b. By adding a new paragraph (c) to read as set forth below.
■ c. By redesignating paragraph (g) as paragraph (d).

§ 319.40-7 Treatments and safeguards.

* * * * *

(c) *Treatments.* Treatment of regulated articles under this subpart must be conducted in accordance with part 305 of this chapter.

* * * * *

§ 319.41-5 [Amended]

■ 40. Section 319.41-5 is amended as follows:
■ a. In paragraph (a), second sentence, by removing the words "other necessary"; and by adding the words "in accordance with part 305 of this chapter," after the word "treatment".
■ b. In paragraph (a), third sentence, by adding the words "in accordance with part 305 of this chapter" after the word "treatment".
■ c. In paragraphs (b), (c), (d)(1), and (d)(3), by adding the words "in accordance with part 305 of this chapter" after the words "other treatment" each time they occur.

§ 319.41-5a [Removed]

■ 41. Section 319.41-5a is removed.

§ 319.55-6 [Amended]

■ 42. Section 319.55-6 is amended as follows:
■ a. In paragraph (a), in the first sentence, by adding the words "in accordance with part 305 of this chapter" after the word "disinfection"; and in the second sentence, by adding the words "in accordance with part 305 of this chapter" after the word "treatment".
■ b. In paragraph (b)(1), in the first sentence, by adding the words "in accordance with part 305 of this chapter" after the word "treatment."

§ 319.56-3 [Amended]

■ 43. In § 319.56-3, paragraph (c)(2) is amended by removing the citation "§ 305.15" and adding the words "part 305" in its place.

§ 319.56-7 [Amended]

■ 44. In § 319.56-7, paragraph (b)(1)(ii) is amended by removing the words "with an approved treatment listed in" and adding the words "in accordance with" in their place.

§ 319.56-11 [Amended]

■ 45. In § 319.56-11, paragraph (b)(1) is amended by removing the words "with an approved treatment listed in" and adding the words "in accordance with" in their place.

§ 319.56-12 [Amended]

■ 46. Section 319.56-12 is amended by removing in the second sentence the words "at a temperature not higher than 20 °F during shipping and upon arrival in the United States, and"; and by removing the third sentence.

§ 319.56-13 [Amended]

■ 47. Section 319.56-13 is amended as follows:
■ a. In paragraph (b)(1)(ii), by removing the words "an approved treatment listed in".
■ b. In paragraphs (b)(5)(xiii) and (b)(5)(xv), by removing the words "with an approved treatment listed in 7 CFR" and adding the words "in accordance with" in their place; and by adding the words "of this chapter" after the words "part 305".

§ 319.56-21 [Amended]

■ 48. In § 319.56-21, paragraphs (b)(2) and (d)(2) are amended by removing the words "an approved treatment listed in".

■ 49. In § 319.56-22, paragraph (g)(2) is revised to read as follows:

§ 319.56-22 Apples and pears from certain countries in Europe.

* * * * *

(g) * * *

(2) Treatments must be conducted in accordance with part 305 of this chapter.

* * * * *

■ 50. Section 319.56-23 is amended as follows:
■ a. In footnote 3, by removing the words "a treatment listed in".
■ b. By revising paragraph (f)(2) to read as set forth below.

§ 319.56-23 Apricots, nectarines, peaches, plumcot, and plums from Chile.

* * * * *

(f) * * *

(2) Treatments must be conducted in accordance with part 305 of this chapter.

* * * * *

§ 319.56-38 [Amended]

■ 51. In § 319.56-38, paragraph (d)(4)(ii)(B) is amended by removing the words "an authorized treatment for the pest is available in" and adding the words "a treatment for the pest is authorized by" in their place.

§ 319.56-46 [Amended]

■ 52. In § 319.56-46, paragraph (a) is amended by removing the words "by receiving a minimum absorbed dose of 400 Gy" and adding the words "for plant pests of the class Insecta, except pupae and adults of the order Lepidoptera" in their place; and by removing the citation "§ 305.31" and adding the words "part 305" in its place.

§ 319.56-47 [Amended]

■ 53. Section 319.56-47 is amended as follows:

■ a. In paragraph (b), by removing the citation "§ 305.31" and adding the words "part 305" in its place.

■ b. In paragraph (d), by removing the citation "§ 305.31" and adding the words "part 305 of this chapter" in its place.

■ 54. In § 319.59-4, paragraph (d)(3) is revised to read as follows:

§ 319.59-4 Karnal bunt.

* * * * *

(d) * * *

(3) Items that require disinfection prior to entry into the United States must be disinfected in accordance with part 305 of this chapter.

* * * * *

■ 55. Section 319.74-2 is amended as follows:

■ a. By redesignating the introductory text to paragraph (c)(1) as the introductory text to paragraph (c); removing paragraph (c)(2); and redesignating paragraphs (c)(1)(i) and (c)(1)(ii) as paragraphs (c)(1) and (c)(2), respectively.

■ b. In the newly redesignated introductory text of paragraph (c), by removing the words "paragraph (c)(2) of this section" and adding the words "part 305 of this chapter" in their place.

■ c. By revising the first two sentences of paragraph (e) to read as set forth below.

§ 319.74-2 Conditions governing the entry of cut flowers.

* * * * *

(e) *Irradiation.* Cut flowers and foliage that are required under this part to be treated or subjected to inspection to control one or more of the plant pests for which irradiation is an approved treatment under part 305 of this chapter may instead be treated with irradiation. Irradiation treatment must be conducted in accordance with the requirements of part 305 of this chapter. * * *

* * * * *

PART 330—FEDERAL PLANT PEST REGULATIONS; GENERAL; PLANT PESTS; SOIL, STONE, AND QUARRY PRODUCTS; GARBAGE

■ 56. The authority citation for part 330 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, 7781-7786, and 8301-8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

§ 330.106 [Amended]

■ 57. In § 330.106, paragraph (a) is amended by adding in the fourth sentence the words "in accordance with part 305 of this chapter" after the word "treatment."

§ 330.300 [Amended]

■ 58. In § 330.300, paragraph (a) is amended by removing the words "methods of" and by adding the words "in accordance with part 305 of this chapter" after the word "treatment."

PART 352—PLANT QUARANTINE SAFEGUARD REGULATIONS

■ 59. The authority citation for part 352 continues to read as follows:

Authority: 7 U.S.C. 7701-7772 and 7781-7786; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

§ 352.10 [Amended]

■ 60. In § 352.10, paragraph (b)(2)(viii) is amended by adding the words "in accordance with part 305 of this chapter" after the word "treatment."

§ 352.30 [Amended]

■ 61. In § 352.30, paragraph (a)(4)(iii) is amended by removing the word "such" and by adding the word "any" in its place; and by adding the words "in accordance with part 305 of this chapter" after the word "treatment."

Done in Washington, DC, January 19, 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–1375 Filed 1–25–10: 8:45 am]

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