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WHEN: Tuesday, June 8, 2010
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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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 97

[Docket No. 30724; Amdt. No. 3373]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 10, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 10, 2010.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory

evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on April 30, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

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[FR Doc. 2010–10699 Filed 5–7–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30723; Amdt. No 3372]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective May 10, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 10, 2010.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on April 30, 2010.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 3 JUN 2010*

Jacksson, AL, Takeoff Minimums and Obstacle DP, Orig
Tuscaloosa, AL, Tuscaloosa Rgnl, RNAV (GPS) RWY 22, Amdt 1
Phoenix, AZ, Phoenix, Deer Valley, RNAV (GPS) RWY 7R, Amdt 1
Willcox, AZ, Cochise County, GPS RWY 21, Orig, CANCELLED
Willcox, AZ, Cochise County, GPS–A, Orig, CANCELLED
Willcox, AZ, Cochise County, RNAV (GPS) RWY 3, Orig
Willcox, AZ, Cochise County, RNAV (GPS) RWY 21, Orig
Little River, CA, Little River, LITTLE RIVER ONE Graphic Obstacle DP
Little River, CA, Little River, Takeoff Minimums and Obstacle DP, Orig
Windsor Locks, CT, Bradley, RNAV (RNP) Z RWY 15, Orig
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (GPS) RWY 27L, Orig-A
Honolulu, HI, Honolulu Intl, ILS RWY 8L, Amdt 22
Honolulu, HI, Honolulu Intl, LOC RWY 8L, Orig
Lanai City, HI, Lanai, ILS OR LOC/DME RWY 3, Amdt 1
Forest City, IA, Forest City Muni, VOR/DME–A, Amdt 3
Fort Dodge, IA, Fort Dodge Rgnl, ILS or LOC RWY 6, Amdt 7A
Lewiston, ID, Lewiston-Nez Perce County, RNAV (GPS) Y RWY 8, Amdt 1A
Lewiston, ID, Lewiston-Nez Perce County, RNAV (GPS) Y RWY 12, Amdt 1A
Lewiston, ID, Lewiston-Nez Perce County, RNAV (GPS) Y RWY 26, Orig-A
Lewiston, ID, Lewiston-Nez Perce County, RNAV (RNP) RWY 30, Orig
Lewiston, ID, Lewiston-Nez Perce County, RNAV (RNP) Z RWY 8, Orig
Lewiston, ID, Lewiston-Nez Perce County, RNAV (RNP) Z RWY 12, Orig
Lewiston, ID, Lewiston-Nez Perce County, RNAV (RNP) Z RWY 26, Orig
Alton/St Louis, IL, St Louis Rgnl, RNAV (GPS) RWY 11, Amdt 1
Chicago/Romeoville, IL, Lewis University, LOC RWY 2, Amdt 1
Chicago/Romeoville, IL, Lewis University, RNAV (GPS) RWY 2, Amdt 1
Chicago/Romeoville, IL, Lewis University, RNAV (GPS) RWY 20, Amdt 1
Effingham, IL, Effingham County Memorial, RNAV (GPS) RWY 1, Orig
Effingham, IL, Effingham County Memorial, VOR RWY 1, Amdt 10
Joliet, IL, Joliet Rgnl, RNAV (GPS) RWY 13, Orig
Joliet, IL, Joliet Rgnl, VOR RWY 13, Amdt 12
Shelbyville, IL, Shelby County, NDB–A, Amdt 2

Shelbyville, IL, Shelby County, RNAV (GPS) RWY 36, Orig
Springfield, IL, Abraham Lincoln Capital, ILS OR LOC RWY 22, Amdt 9
Springfield, IL, Abraham Lincoln Capital, RNAV (GPS) RWY 13, Amdt 1
Springfield, IL, Abraham Lincoln Capital, VOR/DME RWY 4, Orig
Springfield, IL, Abraham Lincoln Capital, VOR/DME RWY 13, Orig
Springfield, IL, Abraham Lincoln Capital, VOR/DME RWY 31, Orig
Auburn, IN, De Kalb County, ILS OR LOC RWY 27, Amdt 1B
Crawfordsville, IN, Crawfordsville Muni, GPS RWY 4, Orig-A, CANCELLED
Crawfordsville, IN, Crawfordsville Muni, RNAV (GPS) RWY 4, Orig
Crawfordsville, IN, Crawfordsville Muni, RNAV (GPS) RWY 22, Orig
Kendallville, IN, Kendallville Muni, GPS RWY 28, Orig-A, CANCELLED
Kendallville, IN, Kendallville Muni, RNAV (GPS) RWY 28, Orig
Augusta, KS, Augusta Muni, Takeoff Minimums and Obstacle DP, Orig
Coffeyville, KS, Coffeyville Muni, VOR/DME RNAV RWY 35, Amdt 3B, CANCELLED
Elkhart, KS, Elkhart-Morton County, NDB RWY 35, Amdt 2
Elkhart, KS, Elkhart-Morton County, RNAV (GPS) RWY 4, Amdt 1
Elkhart, KS, Elkhart-Morton County, RNAV (GPS) RWY 17, Amdt 1
Elkhart, KS, Elkhart-Morton County, RNAV (GPS) RWY 22, Amdt 1
Elkhart, KS, Elkhart-Morton County, RNAV (GPS) RWY 35, Amdt 1
Elkhart, KS, Elkhart-Morton County, Takeoff Minimums and Obstacle DP, Amdt 1
Great Bend, KS, Great Bend Muni, RNAV (GPS) RWY 17, Orig
Wichita, KS, Wichita Mid-Continent, RNAV (GPS) RWY 14, Amdt 1
Wichita, KS, Wichita Mid-Continent, RNAV (GPS) RWY 32, Amdt 1
Mayfield, KY, Mayfield Graves County, GPS RWY 36, Orig, CANCELLED
Mayfield, KY, Mayfield Graves County, RNAV (GPS) RWY 18, Orig
Mayfield, KY, Mayfield Graves County, RNAV (GPS) RWY 36, Orig
Mayfield, KY, Mayfield Graves County, Takeoff Minimums and Obstacle DP, Amdt 2
Mayfield, KY, Mayfield Graves County, VOR/DME–A, Amdt 8
Mayfield, KY, Mayfield Graves County, VOR/DME RNAV OR GPS RWY 18, Amdt 3, CANCELLED
Owensboro, KY, Owensboro-Daviess County, ILS OR LOC RWY 36, Amdt 12
Owensboro, KY, Owensboro-Daviess County, RNAV (GPS) RWY 18, Amdt 1
Owensboro, KY, Owensboro-Daviess County, RNAV (GPS) RWY 23, Amdt 1
Owensboro, KY, Owensboro-Daviess County, RNAV (GPS) RWY 36, Amdt 3
Owensboro, KY, Owensboro-Daviess County, VOR RWY 36, Amdt 18
Sturgis, KY, Sturgis Muni, NDB OR GPS RWY 36, Amdt 6, CANCELLED
Sturgis, KY, Sturgis Muni, RNAV (GPS) RWY 18, Orig
Sturgis, KY, Sturgis Muni, RNAV (GPS) RWY 36, Orig
Sturgis, KY, Sturgis Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Galliano, LA, South Lafourche Leonard Miller Jr, LOC/DME RWY 36, Orig
New Orleans, LA, Louis Armstrong New Orleans Intl, ILS OR LOC RWY 28, Amdt 7A
Worcester, MA, Worcester Rgnl, GPS RWY 33, Amdt 1B, CANCELLED
Worcester, MA, Worcester Rgnl, RNAV (GPS) RWY 33, Orig
Fort Mead (Odenton), MD, Tipton, RNAV (GPS) RWY 28, Amdt 1
Pittsfield, ME, Pittsfield Muni, GPS RWY 19, Orig, CANCELLED
Pittsfield, ME, Pittsfield Muni, NDB RWY 36, Amdt 4
Pittsfield, ME, Pittsfield Muni, RNAV (GPS) RWY 18, Orig
Pittsfield, ME, Pittsfield Muni, RNAV (GPS) RWY 36, Orig
Pittsfield, ME, Pittsfield Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Wiscasset, ME, Wiscasset, GPS RWY 7, Amdt 1A, CANCELLED
Wiscasset, ME, Wiscasset, GPS RWY 25, Amdt 1, CANCELLED
Wiscasset, ME, Wiscasset, RNAV (GPS) RWY 7, Orig
Wiscasset, ME, Wiscasset, RNAV (GPS) RWY 25, Orig
Wiscasset, ME, Wiscasset, Takeoff Minimums and Obstacle DP, Amdt 2
Alpena, MI, Alpena County Rgnl, RNAV (GPS) RWY 19, Orig
Alpena, MI, Alpena County Rgnl, VOR RWY 19, Amdt 15
Oscoda, MI, Oscoda-Wurtsmith, RNAV (GPS) RWY 6, Amdt 1
Baudette, MN, Baudette Intl, ILS OR LOC/DME RWY 30, Orig
Baudette, MN, Baudette Intl, RNAV (GPS) RWY 12, Amdt 1
Baudette, MN, Baudette Intl, RNAV (GPS) RWY 30, Amdt 2
Duluth, MN, Duluth Intl, COPTER ILS OR LOC RWY 27, Amdt 1
Duluth, MN, Duluth Intl, GPS RWY 21, Orig-A, CANCELLED
Duluth, MN, Duluth Intl, ILS OR LOC RWY 9, ILS RWY 9 (CAT II), Amdt 21
Duluth, MN, Duluth Intl, ILS OR LOC RWY 27, Amdt 9
Duluth, MN, Duluth Intl, RNAV (GPS) RWY 3, Orig
Duluth, MN, Duluth Intl, RNAV (GPS) RWY 21, Orig
Duluth, MN, Duluth Intl, VOR OR TACAN RWY 3, Amdt 20
Luverne, MN, Quentin Aanenson Field, RNAV (GPS) RWY 18, Orig
Luverne, MN, Quentin Aanenson Field, RNAV (GPS) RWY 36, Orig
Luverne, MN, Quentin Aanenson Field, Takeoff Minimums and Obstacle DP, Orig
Minneapolis, MN, Airlake, Takeoff Minimums and Obstacle DP, Orig
Minneapolis, MN, Airlake, VOR RWY 12, Amdt 2
Red Wing, MN, Red Wing Rgnl, RNAV (GPS) RWY 27, Amdt 1
Monroe City, MO, Capt. Ben Smith Airfield-Monroe City Airport, VOR/DME RNAV RWY 27, Amdt 1, CANCELLED
Columbus/W PT/Starkville, MS, Golden Triangle Rgnl, LOC/DME RWY 36, Orig
Albemarle, NC, Stanly County, GPS RWY 4R, Orig-C, CANCELLED
Albemarle, NC, Stanly County, ILS OR LOC RWY 22L, Amdt 1
Albemarle, NC, Stanly County, NDB RWY 22L, Amdt 1
Albemarle, NC, Stanly County, RNAV (GPS) RWY 4R, Orig
Albemarle, NC, Stanly County, RNAV (GPS) RWY 22L, Orig
Rockingham, NC, Richmond County, GPS RWY 31, Orig-A, CANCELLED
Rockingham, NC, Richmond County, NDB RWY 32, Amdt 3B
Rockingham, NC, Richmond County, RNAV (GPS) RWY 32, Orig
Rockingham, NC, Richmond County, Takeoff Minimums and Obstacle DP, Amdt 2
Bottineau, ND, Bottineau Muni, GPS RWY 31, Orig-A, CANCELLED
Bottineau, ND, Bottineau Muni, RNAV (GPS) RWY 31, Orig
Bottineau, ND, Bottineau Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Crosby, ND, Crosby Muni, GPS RWY 30, Orig, CANCELLED
Crosby, ND, Crosby Muni, RNAV (GPS) RWY 30, Orig
Crosby ND, Crosby Muni, Takeoff Minimums and Obstacle DP, Orig
Devils Lake, ND, Devils Lake Rgnl, RNAV (GPS) RWY 13, Orig-A
Devils Lake, ND, Devils Lake Rgnl, RNAV (GPS) RWY 21, Orig
Grand Forks, ND, Grand Forks Intl, LOC BC RWY 17R, Amdt 13
Hettinger, ND, Hettinger Muni, GPS RWY 30, Amdt 1, CANCELLED
Hettinger, ND, Hettinger Muni, RNAV (GPS) RWY 30, Orig
Kindred, ND, Hamry Field, RNAV (GPS) RWY 11, Orig
Kindred, ND, Hamry Field, RNAV (GPS) RWY 29, Orig
Langdon, ND, Robertson Field, RNAV (GPS) RWY 14, Orig
Langdon, ND, Robertson Field, RNAV (GPS) RWY 32, Orig
Langdon, ND, Robertson Field, Takeoff Minimums and Obstacle DP, Orig
Keene, NH, Dillant-Hopkins, ILS OR LOC RWY 2, Amdt 4
Keene, NH, Dillant-Hopkins, VOR RWY 2, Amdt 13
Gallup, NM, Gallup Muni, RNAV (GPS) RWY 6, Amdt 2
Fallon, NV, Fallon Muni, RNAV (GPS)-C, Orig
Fallon, NV, Fallon Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Fallon, NV, Fallon Muni, VOR/DME–B, Amdt 4
Newburgh, NY, Steward Intl, ILS OR LOC RWY 27, Amdt 1
Newburgh, NY, Steward Intl, RNAV (GPS) RWY 9, Amdt 1
Newburgh, NY, Steward Intl, RNAV (GPS) RWY 27, Amdt 1
Newburgh, NY, Steward Intl, VOR RWY 27, Amdt 5
Rome, NY, Griffiss Intl, ILS RWY 15, Orig-A, CANCELLED
Rome, NY, Griffiss Intl, ILS OR LOC RWY 33, Amdt 1
Rome, NY, Griffiss Intl, RNAV (GPS) RWY 15, Amdt 1

Rome, NY, Griffiss Intl, RNAV (GPS) RWY 33, Amdt 1
Williamson/Sodus, NY, Williamson-Sodus, RNAV (GPS) RWY 28, Amdt 2
Bryan, OH, Williams County, GPS RWY 7, Orig, CANCELLED
Bryan, OH, Williams County, GPS RWY 25, Orig, CANCELLED
Bryan, OH, Williams County, NDB–A, Amdt 7
Bryan, OH, Williams County, RNAV (GPS) RWY 7, Orig
Bryan, OH, Williams County, RNAV (GPS) RWY 25, Orig
Bryan, OH, Williams County, Takeoff Minimums and Obstacle DP, Orig
East Liverpool, OH, Columbiana County, GPS RWY 25, Orig, CANCELLED
East Liverpool, OH, Columbiana County, RNAV (GPS) RWY 25, Orig
Millersburg, OH, Holmes County, Takeoff Minimums and Obstacle DP, Amdt 1
Steubenville, OH, Jefferson County Airpark, GPS RWY 14, Orig, CANCELLED
Steubenville, OH, Jefferson County Airpark, GPS RWY 32, Orig, CANCELLED
Steubenville, OH, Jefferson County Airpark, RNAV (GPS) RWY 14, Orig
Steubenville, OH, Jefferson County Airpark, RNAV (GPS) RWY 32, Orig
Youngstown, OH, Youngstown Elser Metro, GPS RWY 10, Orig-B, CANCELLED
Youngstown, OH, Youngstown Elser Metro, GPS RWY 28, Orig-B, CANCELLED
Youngstown, OH, Youngstown Elser Metro, RNAV (GPS) RWY 10, Orig
Youngstown, OH, Youngstown Elser Metro, RNAV (GPS) RWY 28, Orig
Youngstown, OH, Youngstown Elser Metro, VOR–C, Amdt 2
Pauls Valley, OK, Pauls Valley, RNAV (GPS) RWY 35, Amdt 1
Pauls Valley, OK, Pauls Valley, Takeoff Minimums and Obstacle DP, Orig
Woodward, OK, West Woodward, VOR/DME–A, Amdt 7
Gettysburg, PA, Gettysburg Rgnl, RNAV (GPS)–A, Orig
Gettysburg, PA, Gettysburg Rgnl, Takeoff Minimums and Obstacle DP, Orig
Washington, PA, Washington County, VOR–B, Amdt 7, CANCELLED
Orangeburg, SC, Orangeburg Muni, NDB RWY 5, Amdt 1, CANCELLED
Orangeburg, SC, Orangeburg Muni, RNAV (GPS) RWY 5, Amdt 1
Orangeburg, SC, Orangeburg Muni, RNAV (GPS) RWY 23, Amdt 1
Orangeburg, SC, Orangeburg Muni, RNAV (GPS) RWY 35, Amdt 1
Athens, TN, McMinn County, NDB RWY 2, Amdt 6
Athens, TN, McMinn County, NDB RWY 20, Amdt 7
Athens, TN, McMinn County, RNAV (GPS) RWY 2, Orig
Athens, TN, McMinn County, RNAV (GPS) RWY 20, Amdt 1
Athens, TN, McMinn County, Takeoff Minimums and Obstacle DP, Amdt 1
Clarksville, TN, Outlaw Field, RNAV (GPS) RWY 17, Orig
Lafayette, TN, Lafayette Muni, RNAV (GPS) RWY 1, Orig
Lafayette, TN, Lafayette Muni, RNAV (GPS) RWY 19, Amdt 1
Follett, TX, Follet-Lipscomb County, RNAV (GPS) RWY 35, Orig,
Follett, TX, Follet-Lipscomb County, Takeoff Minimums and Obstacle DP, Orig
Follett, TX, Follet-Lipscomb County, VOR/DME–A, Amdt 3
Grayford, TX, Possum Kingdom, Takeoff Minimums and Obstacle DP, Orig-A
Lubbock, TX, Lubbock Preston Smith Inthl, RADAR–1, Amdt 7, CANCELLED
Farmville, VA, Farmville Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Wise, VA, Lonesome Pine, LOC/DME RWY 24, Orig-A
Barre/Montpelier, VT, Edward F. Knapp State, RNAV (GPS) RWY 17, Orig-A
Richland, WA, Richland, Takeoff Minimums and Obstacle DP, Orig
Appleton, WI, Outagamie County Rgnl, ILS OR LOC RWY 30, Amdt 3
Appleton, WI, Outagamie County Rgnl, RNAV (GPS) RWY 12, Amdt 1
Appleton, WI, Outagamie County Rgnl, RNAV (GPS) RWY 21, Amdt 2
Appleton, WI, Outagamie County Rgnl, RNAV (GPS) RWY 30, Amdt 1
Appleton, WI, Outagamie County Rgnl, Takeoff Minimums and Obstacle DP, Orig
Janesville, WI, Southern Wisconsin Rgnl, RNAV (GPS) RWY 4, Amdt 1
Janesville, WI, Southern Wisconsin Rgnl, RNAV (GPS) RWY 14, Amdt 1
Janesville, WI, Southern Wisconsin Rgnl, RNAV (GPS) RWY 22, Amdt 1
Manitowish Waters, WI, Manitowish Waters, GPS RWY 32, Orig-B, CANCELLED
Manitowish Waters, WI, Manitowish Waters, NDB RWY 32, Orig-A, CANCELLED
Manitowish Waters, WI, Manitowish Waters, RNAV (GPS) RWY 14, Orig
Manitowish Waters, WI, Manitowish Waters, RNAV (GPS) RWY 32, Orig
Superior, WI, Richard I Bong, NDB RWY 31, Amdt 4A, CANCELLED

On April 15, 2010 (75 FR 19542) the FAA published an Amendment in Docket No. 30716, Amdt 3366 to Part 97 of the Federal Aviation Regulations under section 97.23 and 97.33. The following entries effective 3 June 2010 are hereby *rescinded:*

Kutztown, PA, Kutztown, RNAV (GPS)–A, Orig, CANCELLED
Kutztown, PA, Kutztown, Takeoff Minimums and Obstacle DP, Orig, CANCELLED
Kutztown, PA, Kutztown, VOR–B, Amdt 1B, CANCELLED

On April 28, 2010 (75 FR 22217) the FAA published an Amendment in Docket No. 30720, Amdt 3370 to Part 97 of the Federal Aviation Regulations under section 97.23 and 97.33. The following entry effective 3 June 2010 is hereby *rescinded:*

Fostoria, OH, Fostoria Metropolitan, RNAV (GPS) RWY 27, Amdt 1

[FR Doc. 2010–10708 Filed 5–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 100205080–0187–01]

RIN 0694–AE87

Addition to the List of Validated End-Users: Advanced Micro Devices China, Inc.

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to add an end-user to the list of validated end-users in the People's Republic of China (PRC). Exports, reexports and transfers (in-country) of certain items to three facilities of this end-user are now authorized under Authorization Validated End-User (VEU).

DATES: This rule is effective May 10, 2010. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AE87, by any of the following methods:

E-mail: publiccomments@bis.doc.gov Include "RIN 0694–AE87" in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Sheila Quarterman, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AE87.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov* or by fax to (202) 395–7285. Comments on this collection of information should be submitted separately from comments on the final rule (*i.e.,* RIN 0694–AE87)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Susan Kramer, Acting Chairman, End-User Review Committee, Bureau of Industry and Security, U.S. Department

of Commerce, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230; by telephone (202) 482–0117, or by e-mail to *skramer@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User (VEU): The List of Approved End-Users, Eligible Items and Destinations in the People's Republic of China (PRC)

Consistent with U.S. Government policy to facilitate trade for civilian end-users in the PRC, BIS amended the EAR in a final rule on June 19, 2007 (72 FR 33646) by creating a new authorization for "validated end-users" located in eligible destinations to which eligible items may be exported, reexported or transferred under a general authorization instead of an individually validated license, in conformance with Section 748.15 of the EAR. Validated end-users may obtain eligible items that are on the Commerce Control List without having to wait for their suppliers to obtain export or reexport licenses from BIS. Eligible items include commodities, software and technology, except those controlled for missile technology or crime control reasons. Authorization VEU may be used by U.S. and foreign reexporters, and does not have an expiration date.

Authorization VEU is a mechanism to facilitate increased high-technology exports to companies that have a verifiable record of civilian uses for such items. The validated end-users listed in Supplement No. 7 to Part 748 were reviewed and approved by the U.S. Government in accordance with the provisions of Section 748.15 and Supplement Nos. 8 and 9 to Part 748 of the EAR. Currently, validated end-users may be located in the PRC and India.

Additional Validated End-User in the PRC and Its Respective "Eligible Items (By ECCN)" and "Eligible Destination"

This final rule amends Supplement No. 7 to Part 748 of the EAR to identify the eligible facilities in the PRC of a company that has been designated a validated end-user, and to identify the items that may be exported, reexported or transferred (in-country) to the specified eligible facilities under Authorization VEU. The names and addresses of the newly approved validated end-user and its three eligible facilities are as follows:

Validated End-User

Advanced Micro Devices China, Inc.

Eligible Destinations

AMD Technologies (China) Co., Ltd., No. 88, Su Tong Road, Suzhou, China 215021.

Advanced Micro Devices (Shanghai) Co., Ltd., Riverfront Harbor, Building 48, Zhangjiang Hi-Tech Park, 1387 Zhangdong Rd., Pudong, Shanghai, 201203.

AMD Technology Development (Beijing) Co., Ltd., 18F, North Building, Raycom Infotech Park Tower C, No. 2 Science Institute South Rd., Zhong Guan Cun, Haidian District, Beijing, China 100190.

The eligible items that may be sent to these facilities under Authorization VEU are classified under Export Control Classification Numbers (ECCNs) 3D002, 3D003, 3E001 (as it applies to "technology" for items classified under 3B001, 3B002, 3C002 and 3C004), 3E002, 3E003.e (limited to the "development" and "production" of integrated circuits for commercial applications), 4D001, 4D002, 4D003 and 4E001 (applicable to the "development" of products under ECCN 4A003). This authorization was made based on an application submitted to BIS, which was reviewed by the interagency End-User Review Committee.

Approving this end-user as a validated end-user and these three facilities is expected to further facilitate exports to civilian end-users in the PRC, and is expected to result in a significant savings of time and resources for suppliers and the eligible facilities. Authorization VEU eliminates the burden on exporters and reexporters of preparing individual license applications, because exports, reexports, and transfers (in-country) of eligible items to these facilities may now be made under general authorization instead of under license. Exporters and reexporters may now supply validated end-users much more quickly, thus enhancing the competitiveness of the exporters, reexporters, and end-users in the PRC.

To ensure appropriate facilitation of exports and reexports, on-site reviews of the validated end-users may be warranted pursuant to paragraph 748.15(f)(2) and Section 7(iv) of Supplement No. 8 to Part 748 of the EAR. If such reviews are warranted, BIS will inform the PRC Ministry of Commerce.

Since August 21, 2001, the Export Administration Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended most recently by the Notice of August 13, 2009 (74 FR 41325 (August 14, 2009), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

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

2. Notwithstanding any other provisions of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves collections previously approved by the OMB under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748; and for recordkeeping, reporting and review requirements in connection with Authorization Validated End-User, which carries and estimated burden of 30 minutes per submission. This rule is expected to result in a decrease in license applications submitted to BIS. Total burden hours associated with the Paperwork Reduction Act and Office of Management and Budget control number 0694–0088 are not expected to increase significantly as a result of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to 5 U.S.C. 553(a)(1), notice of proposed rulemaking, the opportunity for public participation and a delay in effective date are inapplicable because this regulation involves a military and foreign affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this rule is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be

submitted to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

■ Accordingly, part 748 of the Export Administrative Regulations (15 CFR Parts 730–774) is amended as follows:

PART 748—[AMENDED]

■ 1. The authority citation for 15 CFR Part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

■ 2. Supplement No. 7 to Part 748 is amended by adding one entry for "China (People's Republic of)" in alphabetical order to read as follows:

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END–USER (VEU); LIST OF VALIDATED END–USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER AND ELIGIBLE DESTINATIONS

Country	Validated end-user	Eligible items (by ECCN)	Eligible destination
China (People's Republic of).	Advanced Micro Devices China, Inc	3D002, 3D003, 3E001 (as it applies to "technology" for items classified under 3B001, 3B002, 3C002 and 3C004), 3E002, 3E003.e (limited to the "development" and "production" of integrated circuits for commercial applications), 4D001, 4D002, 4D003 and 4E001 (applicable to the "development" of products under ECCN 4A003).	AMD Technologies (China) Co., Ltd No. 88, Su Tong Road, Suzhou, China 215021. Advanced Micro Devices (Shanghai) Co., Ltd. Riverfront Harbor, Building 48, Zhangjiang Hi-Tech Park 1387 Zhangdong Rd., Pudong, Shanghai, 201203. AMD Technology Development (Beijing) Co., Ltd. 18F, North Building Raycom Infotech Park Tower C, No. 2 Science Institute South Rd., Zhong Guan Cun, Haidian District, Beijing, China 100190.
*	*	*	*

Dated: May 3, 2010.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2010–11024 Filed 5–7–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0311]

Drawbridge Operation Regulation; Mermentau River, Mermentau, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Burlington Northern Santa Fe Railroad swing span bridge across the Mermentau River, mile 68.0, at Mermentau, Acadia and Jefferson Davis Parishes, Louisiana. The deviation is necessary to replace the top flanges on four floor beams. This deviation allows the bridge to remain closed to navigation for ten days.

DATES: This deviation is effective from 6:30 a.m. on May 18, 2010 through 5 p.m. on May 27, 2010.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0311 and are available online by going to *http://www.regulations.gov*, inserting USCG–2010–0311 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Kay Wade, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, e-mail *Kay.B.Wade@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Burlington Northern Santa Fe Railway Company has requested a temporary deviation from the operating schedule of the swing span bridge across the Mermentau River at mile 68.0 in Mermentau, Acadia and Jefferson Parishes, Louisiana. The closure is necessary in order to remove and replace the top flanges on four floor beams on the bridge. This maintenance is essential for the continued operation of the bridge.

Presently, the bridge opens on signal for the passage of vessels, as required by 33 CFR 117.5. This deviation will allow the bridge to remain in the closed-to-navigation position from 6:30 a.m. Tuesday, May 18 through 5 p.m. Thursday, May 27, 2010.

The vertical clearance of the swing span bridge in the closed-to-navigation position is 10.0 feet above Mean High Water. There are no alternate waterway routes available. Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft. The bridge opens for the passage of navigation an average of 5 times per month. With sufficient notice, the bridge can be opened for emergencies. Due to prior experience and

coordination with waterway users, it has been determined that these closures will not have a significant effect on navigation.

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

Dated: April 26, 2010.

David M. Frank,

Bridge Administrator.

[FR Doc. 2010–10947 Filed 5–7–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0239]

RIN 1625–AA00

Safety Zones; Marine Events Within the Captain of the Port Sector Northern New England Area of Responsibility

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing eight safety zones for marine events within the Captain of the Port Sector Northern New England area of responsibility for regattas, power boat races, parades, and fireworks displays. This action is necessary to provide for the safety of life on navigable waters during the events. Entry into, transit through, mooring or anchoring within these zones is prohibited unless authorized by the Captain of the Port Sector Northern New England.

DATES: This rule is effective in the CFR on May 10, 2010 through 11:59 p.m. on September 29, 2010. This rule is effective with actual notice for purposes of enforcement beginning at 10 a.m. on May 1, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0239 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0239 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Junior Grade Laura van der Pol, Waterways Management Division at Coast Guard Sector Northern New England, telephone 207–741–5421, e-mail *Laura.K.vanderPol1@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing a NPRM is impractical as the Coast Guard did not receive notification of the specific location or planned dates for the events in sufficient time to issue a NPRM without delaying this rulemaking. Further, it is contrary to public interest to delay the effective date of this rule. Delaying the effective date by first publishing a NPRM and holding a comment period would be contrary to the rule's objectives of ensuring safety of life on the navigable waters during these scheduled events as immediate action is needed to protect persons and vessels from the hazards associated with vessels participating in regattas, races and parades as well as the hazardous nature of fireworks including unexpected detonation and burning debris.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. In addition to the reasons stated above, this rule is intended to ensure the safety of the event participants, spectators and other waterway users thus any delay in the rule's effective date would be impractical.

Basis and Purpose

Marine events are frequently held on the navigable waters within the area of responsibility for Captain of the Port Sector Northern New England. These events include sailing regattas, parades, power boat races, fireworks displays, and other vessel races. Based on the nature of the events, large number of participants and spectators, and the event locations, the Coast Guard has determined that the events listed in this rule could pose a risk to participants or waterway users if normal vessel traffic were to interfere with the event. Possible hazards include risks of participant injury or death resulting from near or actual contact with non-participant vessels traversing through the safety zones. In order to protect the safety of all waterway users including event participants and spectators, this temporary rule establishes safety zones for the time and location of each event.

This rule prevents vessels from entering, transiting, mooring or anchoring within areas specifically designated as safety zones during the periods of enforcement unless authorized by the Captain of the Port or designated on-scene patrol personnel. On-scene patrol personnel may be comprised of local, state or federal officials authorized to act in support of the Coast Guard.

The Coast Guard has ordered safety zones or special local regulations for all of these eight areas for past events and has not received public comments or concerns regarding the impact to waterway traffic from these annual events.

Discussion of Rule

This temporary rule creates safety zones for all navigable waters within the described area of each event as follows: A safety zone 50 yards in radius from all participants in the Downeast Adventure Race on the St. Croix River in Calais, Maine to be enforced from 10 a.m. to 2 p.m. on May 1, 2010; a safety zone of 350 yard radius from the Hampton Beach Fireworks launch site in the vicinity of Hampton Beach, New Hampshire to be enforced from 8 p.m. to 10:30 p.m. every Saturday, Sunday, and Wednesday from May 5, 2010, through September 29, 2010; a safety zone 50 yards in radius around all participants in the Tall Ships visit to Portsmouth Regatta and Parade in the vicinity of Portsmouth Harbor, New Hampshire, to be enforced from 10 a.m. through 7 p.m. on May 28, 2010 through May 31, 2010; a safety zone 50 yards in radius around all participants in the Bar Harbor Blessing of the Ships in the vicinity of Bar Harbor, Maine to be enforced from 12 p.m. through 1:30 p.m. on June 6, 2010; a safety zone 50 yards in radius around all participants in the Boothbay Harbor Lobster Boat Races in Boothbay Harbor, Maine to be enforced from 10 a.m. until 3 p.m. on June 19, 2010; a safety zone 50 yards in radius

around all participants in the Rockland Harbor Lobster Boat Races in the vicinity of Rockland Harbor, Maine, to be enforced from 10 a.m. until 3 p.m. on June 20, 2010; a safety zone 50 yards in radius around all participants in the Windjammer Days Parade of Ships in the vicinity of Boothbay Harbor, Maine, to be enforced from 12 p.m. until 5 p.m. on June 22 and 23, 2010; a safety zone 350 yards in radius from the fireworks launch site in the vicinity of Boothbay Harbor, Maine, for the Windjammer Days Fireworks to be enforced from 8 p.m. until 10:30 p.m. on June 23, 2010. As large numbers of spectator vessels are expected to congregate around the location of these events, the safety zones are needed to protect both spectators and participants from the safety hazards created by the event. During the enforcement period of the safety zones, persons and vessels will be prohibited from entering, transiting, remaining within, anchoring or mooring within the zone unless specifically authorized by the Captain of the Port or his designated representatives. The Coast Guard may be assisted by other federal, state and local agencies in the enforcement of these safety zones.

The Coast Guard determined that these safety zones will not have a significant impact on vessel traffic due to the temporary nature and limited size of the safety zones and the fact that vessels are allowed to transit the navigable waters outside of the safety zones.

Advanced public notifications will also be made to the local maritime community by the Local Notice to Mariners as well as Broadcast Notice to Mariners.

Regulatory Analyses

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

Regulatory Planning and Review

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

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons: The safety zones will be of limited duration, they cover only a small portion of the navigable waterways, and the events are designed to avoid, to the extent possible, deep draft, fishing, and recreational boating traffic routes. In addition, vessels requiring entry into the area of the safety zones may be authorized to do so by the Captain of the Port.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the designated safety zones during the enforcement periods stated for each event in the List of Subjects.

The safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zones will be of limited size and of short duration, and vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as safety zones. Additionally, before the effective period, the Coast Guard will issue notice of the time and location of each safety zone through a Local Notice to Mariners and Broadcast Notice to Mariners.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,

because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0239 to read as follows:

§ 165.T01–0239 Safety zones; Marine events within the Captain of the Port Sector Northern New England Area of Responsibility.

(a) *Safety zones.* (1) The following areas are designated safety zones:

(2) *Locations.* For all fireworks events listed in the events table in this paragraph (a)(2), all navigable waters within a 350 yard radius of the fireworks launch site. For all power boat races, regattas, boat parades, rowing races, and paddling boat races, all vessels not associated with the event must maintain a 50 yard radius around all vessels participating in the event.

EVENTS TABLE

5.0	MAY
5.1 Downeast Adventure Race	Event Type: Rowing and paddling boat race. Sponsor: Washington County Community College. Date: May 1, 2010. Enforcement Time: 10 am to 2 pm. Location: The regulated area includes all U.S. waters in the Saint Croix River from the launch site in Calais, Maine at approximate position 45°11′24″ N, 067°16′48″ W (NAD 83), following the river bank to the end site at position 44°10′07″ N, 067°14′29″ W (NAD 83).
5.2 Hampton Beach Fireworks	Event Type: Fireworks display. Sponsor: Hampton Beach Village District. Dates: Every Wednesday, Saturday and Sunday from May 5, 2010 through September 29, 2010, as specified in the USCG District 1 Local Notice to Mariners at: *http://www.navcen.uscg.gov/LNM/default.htm*. Enforcement Time: 8 pm to 10:30 pm. Location: In the vicinity of the Hampton Beach, New Hampshire waterfront in approximate position 42°54′33″ N, 070°48′38″ W (NAD 83).
5.3 Tall Ships Visiting Portsmouth	Event Type: Regatta and boat parade. Sponsor: Portsmouth Maritime Commission, Inc. Date: May 28 through May 31, 2010 Enforcement Time: 10 am to 7 pm. Location: The regulated area includes all waters of Portsmouth Harbor, New Hampshire within the following points (NAD 83): 43°03′11″ N 070°42′26″ W 43°03′18″ N 070°41′51″ W 43°04′42″ N 070°42′11″ W 43°04′28″ N 070°44′12″ W 43°05′36″ N 070°45′56″ W 43°05′29″ N 070°46′09″ W 43°04′19″ N 070°44′16″ W

EVENTS TABLE—Continued

5.0	MAY
	43°04′22″ N 070°42′33″ W
6.0	JUNE
6.1 Bar Harbor Blessing of the Fleet	Event Type: Regatta and boat parade. Sponsor: Town of Bar Harbor, Maine. Date: June 6, 2010. Enforcement Time: 12 pm to 1:30 pm. Location: The regulated area includes all waters of Bar Harbor, Maine within the following points (NAD 83): 44°23′32″ N 068°12′19″ W 44°23′30″ N 068°12′00″ W 44°23′37″ N 068°12′00″ W 44°23′35″ N 068°12′19″ W
6.2 Boothbay Harbor Lobster Boat Races	Event Type: Power boat race. Sponsor: Boothbay Harbor Lobster Boat Race Committee. Date: June 19, 2010. Enforcement Time: 10 am to 3 pm. Location: The regulated area includes all waters of Boothbay Harbor, Maine within the following points (NAD 83): 43°50′04″ N 069°38′37″ W 43°50′54″ N 069°38′06″ W 43°50′49″ N 069°37′50″ W 43°50′00″ N 069°38′20″ W
6.3 Rockland Harbor Lobster Boat Races	Event Type: Power boat race. Sponsor: Rockland Harbor Lobster Boat Race Committee. Date: June 20, 2010. Enforcement Time: 10 am to 3 pm. Location: The regulated area includes all waters of Rockland Harbor, Maine within the following points (NAD 83): 44°05′59″ N 069°04′53″ W 44°06′43″ N 069°05′25″ W 44°06′50″ N 069°05′05″ W 44°06′05″ N 069°04′34″ W
6.4 Windjammer Days Parade of Ships	Event Type: Regatta and boat parade. Sponsor: Boothbay Region Chamber of Commerce. Date: June 22 & 23, 2010. Enforcement Time: 12 pm to 5 pm. Location: The regulated area includes all waters of Boothbay Harbor, Maine within the following points (NAD 83): 43°51′02″ N 069°37′33″ W 43°50′47″ N 069°37′31″ W 43°50′23″ N 069°37′57″ W 43°50′01″ N 069°37′45″ W 43°50′01″ N 069°38′31″ W 43°50′25″ N 069°38′25″ W 43°50′49″ N 069°37′45″ W
6.5 Windjammer Days Fireworks	Event Type: Fireworks display. Sponsor: Boothbay Harbor Region Chamber of Commerce. Date: June 23, 2010. Enforcement Time: 8 pm to 10:30 pm. Location: In the vicinity of McFarland Island, Boothbay Harbor, Maine in approximate position 43°50′38″ N, 069°37′57″ W (NAD 83).

(b) *Notification.* Coast Guard Sector Northern New England will cause notice of the enforcement of these temporary safety zones to be made by all appropriate means to affect the widest publicity among the effected segments of the public, including publication in the Local Notice to Mariners and Broadcast Notice to Mariners.

(c) *Effective period.* This rule is effective from 10 a.m. on May 1, 2010, through 11:59 p.m. on September 29, 2010.

(d) *Enforcement period.* This section will be enforced for the duration of each event indicated in the table in paragraph (a)(2) of this section. If the event is cancelled due to inclement weather, this section is in effect for the day following the scheduled time listed in the table above. Notification of events held on a rain date will be made by Broadcast Notice to Mariners.

(e) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entry into, transiting, remaining within, mooring or anchoring within these safety zones is prohibited unless authorized by the Captain of the Port or his designated representatives.

(2) These temporary safety zones are closed to all vessel traffic, except as may be permitted by the Captain of the Port or his designated representatives. Vessel operators given permission to enter or operate in the safety zones must comply with all directions given to them by the Captain of the Port or his designated representatives. Vessels that are granted permission by the Captain of the Port or designated representative to enter or remain within a safety zone may be required to be at anchor or moored to a waterfront facility such that the vessel's location will not interfere with the progress of the event. At all times when a vessel has been granted permission to enter within a safety zone, it shall endeavor to maintain at least 50 yards distance from any event participant unless otherwise directed.

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

(4) Vessel operators desiring to enter or operate within the safety zones shall telephone the Captain of the Port at 207–767–0303, or his designated representative via VHF Channel 16 to obtain permission to do so.

(5) The Captain of the Port or his designated representative may delay or terminate any event listed in the events table in paragraph (a)(2) of this section to ensure safety. Such action may be required as a result of weather, vessel traffic density, spectator activities or participant behavior.

Dated: April 27, 2010.

J.B. McPherson,

Captain, U.S. Coast Guard, Captain of the Port, Sector Northern New England.

[FR Doc. 2010–10948 Filed 5–7–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0290; FRL–9142–7]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a request submitted by the Ohio Environmental Protection Agency (Ohio EPA) on March 17, 2009, to revise the Ohio State Implementation Plan (SIP) under the Clean Air Act (CAA). The State has submitted revisions to rules for approval under Ohio Administrative Code (OAC) Chapter 3745–15, "General Provisions," which include the adoption of the Federal definition and citation of the CAA, and clarifications for exemptions and new requirements for sources regulated under the Title V permitting program. These revisions are included in OAC 3745–15–01 and OAC 3745–15–05, respectively.

DATES: This direct final rule will be effective July 9, 2010, unless EPA receives adverse comments by June 9, 2010. If adverse comments are 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–R05–OAR–2009–0290, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: bortzer.jay@epa.gov.*
3. *Fax:* (312) 692–2054.
4. *Mail:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2009–0290. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by 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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andy Chang, Environmental Engineer, at (312) 886–0258 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, *chang.andy@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background
When did the State submit the requested rule revisions to EPA, and did the State satisfy the administrative requirements of 40 CFR Part 51, Appendix V?
II. Analysis of the State's Requests
A. OAC 3745–15–01—Definitions.
B. OAC 3745–15–05—"De Minimis" Air Contaminant Source Exemption
III. What action is EPA taking?

IV. Statutory and Executive Order Reviews

I. Background

When did the state submit the requested rule revisions to EPA, and did the State satisfy the administrative requirements of 40 CFR part 51, Appendix V?

Ohio EPA submitted the requested revisions to EPA on March 17, 2009, and demonstrated through its submittal that the State satisfied all the requirements of 40 CFR part 51, Appendix V, "Criteria for Determining the Completeness of Plan Submissions." The administrative requirements are outlined in Section 2.1 of this appendix. Most notably, a public hearing was held on January 8, 2007, and the rules became effective State-wide on January 22, 2009.

II. Analysis of the State's Requests

The State has requested that EPA approve revisions to rules under Chapter 3745–15, "General Provisions," of the OAC. These rules include 3745–15–01, "Definitions" and 3745–15–05, " 'De minimis' air contaminant source exemption." The revisions and EPA's responses are described in detail below.

A. OAC 3745–15–01—Definitions

Ohio EPA has requested that the Federal definition and citation of "Clean Air Act," or "CAA," be incorporated into the SIP. As this request would align State and Federal definitions and eliminate any ambiguity related to the term, EPA finds the requested revision to be approvable. Furthermore, this is a revision that EPA has found to be approvable in other States and SIPs.

Additionally, the State has requested several other minor revisions for incorporation into the SIP, which include the addition of a "Comment" at the beginning of the rule to refer readers to the "Incorporation by Reference" section at the end of the rule, and small wording changes. The "Incorporation by Reference" section at the end of the rule contains a listing of the supplementary publications referenced through OAC Chapter 3745–15. References to these materials, as well as a list of these materials themselves, serve to assist any interested parties with obtaining these documents and do not detract value from the existing rules; therefore, EPA finds the corresponding requested revisions to be approvable. Lastly, Ohio EPA's requested wording changes are minor and ministerial, and they serve to clarify or disambiguate the existing rules; therefore, EPA finds the corresponding revisions to be approvable.

B. OAC 3745–15–05—"De Minimis" Air Contaminant Source Exemption

Ohio EPA has requested that several revisions pertaining to the "de minimis" air contaminant source exemption be incorporated into the SIP. The requested revisions to introductory paragraph (E) of OAC 3745–15–05 specify that any one of the following seven record types outlined in OAC 3745–15–05(E)(1) to (7) are adequate to demonstrate the actual emissions from an eligible source. Previously, the last line of OAC 3745–15–05(E) read, "All the following information, if applicable, shall be adequate to make that demonstration:". These requested revisions clarify the existing SIP; EPA therefore finds them to be approvable.

The revision requested by Ohio EPA to OAC 3745–15–05(E)(7) is meant to clarify ambiguity in the rule concerning the phrase, "certification under oath." The last part of this paragraph now reads, "* * * and a written certification by the owner or operator that the applicable exemption levels were complied with," i.e. the notion of "certification under oath" has been replaced with "written certification" in the rule. As this revision not only clarifies the existing rule but specifies what type of certification is necessary to meet the records requirement, EPA finds the request to be approvable.

The State has revised paragraph (H) of OAC 3745–15–05 to require that insignificant emissions units (IEUs) be identified, and not merely listed. Ohio EPA has made this revision because an emissions activity category form must be included in the Title V application for each IEU that is subject to one or more applicable requirements. As this revision strengthens the State's authority to oversee sources regulated under the Title V program, EPA finds the revisions to OAC 3745–15–05 (H) to be approvable.

Paragraph (I) of OAC 3745–15–05 has been revised to state that if the owner or operator of a source exceeds the exempt emission levels provided in this rule, he or she may be required to submit an application for a permit to operate pursuant to OAC 3745–77, "General Title V Rules." As this revision strengthens the State's authority to oversee sources regulated under the Title V program, EPA finds the revision to OAC 3745–15–05 (I) to be approvable.

Ohio EPA communicated to EPA via electronic mail on December 2, 2009, attesting that the preceding changes to this rule were only clerical in nature, and that the rule did not include any changes that would affect how Ohio EPA determines if a source is exempt due to "de minimis" air emissions. The State has therefore quantified the effect of the changes as having no effect on emissions.

Additionally, the State has requested several other minor revisions for incorporation into the SIP, which include the addition of a "Comment" at the beginning of the rule to refer readers to the "Incorporation by Reference" section at the end of the rule, and small wording changes. As discussed in the section addressing OAC 3745–15–01, references to the materials in the "Incorporation by Reference" section, as well as a list of these materials themselves, serve to assist any interested parties with obtaining these documents and do not detract value from the existing rules; therefore, EPA finds the corresponding requested revisions to be approvable. Lastly, Ohio EPA's requested wording changes are minor and ministerial, and they serve to clarify or disambiguate the existing rules; therefore, EPA finds the corresponding revisions to be approvable.

III. What action is EPA taking?

EPA is approving revisions to the Ohio SIP; the State has submitted revisions to rules Chapter 3745–15, "General Provisions," of the OAC. These rules include OAC rule 3745–15–01 and OAC rule 3745–15–05. We are approving these rules because they are consistent with the regulatory framework which helps the State maintain healthy air quality levels. The revisions that the State has submitted are based on Federal definitions, requirements under Federal permitting laws, or amendments that aim to remove ambiguity from existing language in the SIP. The State's submittal meets the requirements of 40 CFR part 51, Appendix V, and strengthens OAC 3745–15–01 and OAC 3745–15–05.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective July 9, 2010 without further notice unless we receive relevant adverse written comments by June 9, 2010. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule

based on the proposed action. EPA will not institute a second comment period; therefore, any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective July 9, 2010.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 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: April 19, 2010.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(148) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(148) On March 17, 2009, Ohio submitted revisions to Ohio Administrative Code Chapter 3745–15, Rules 3745–15–01 and 3745–15–05. The revisions pertain to general provisions of OAC Chapter 3745.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745–15–01 "Definitions." and Rule 3745–15–05 " 'De minimis' air contaminant source exemption." The rules were adopted on January 12, 2009, and became effective on January 22, 2009.

(B) January 12, 2009, "Director's Final Findings and Orders", signed by Chris Korleski, Director, Ohio Environmental Protection Agency.

[FR Doc. 2010–10836 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2009–0790; FRL–9114–3]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation Number 1

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving State Implementation Plan revisions submitted by the State of Colorado on August 3, 2007 to Colorado's Regulation Number 1 (revisions to the performance testing requirements for air curtain destructors). Colorado adopted these rule revisions on October 2, 2006. All other actions submitted by the State of Colorado concurrent with Colorado's Regulation Number 1 revision request will be acted

on at a later date. This action is being taken under section 110 of the Clean Air Act.

DATES: This rule is effective on July 9, 2010 without further notice, unless EPA receives adverse comment by June 9, 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–2009–0790, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: videtich.callie@epa.gov* and *leone.kevin@epa.gov*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie A. Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Callie A. Videtich, 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–2009–0790. 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.* 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 *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 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: Kevin Leone, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6227, or *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. General Information
A. What should I consider as I prepare my comments for EPA?
II. What is being addressed in this document?
III. What are the changes that EPA is proposing to approve?
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 word *Act* or initials *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 *Colorado* mean the State of Colorado, 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 *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

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

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

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

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

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

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

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

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

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

II. What is being addressed in this document?

EPA is approving a revision to the Colorado State Implementation Plan

(SIP). On August 3, 2007, the State of Colorado submitted a revision to its SIP, regarding the applicability provisions for incinerator performance testing requirements. This revision addressed Regulation Number 1 of the Colorado Air Quality Control Commission (AQCC) Regulations, entitled "Emission Control for Particulate Matter, Smoke, Carbon Monoxide, and Sulfur Oxides." Colo. Code Reg. § 1001–3, and provides an exemption for air curtain destructors.

III. What are the changes that EPA is proposing to approve?

Prior to Colorado's revision, Regulation Number 1 Section III.B provided that all incinerators, with the exception of biomedical waste incinerators, meet certain particulate matter grain loading standards. To ensure compliance with these standards, the regulation provides the Colorado Air Pollution Control Division with the ability to require performance tests, in accordance with 40 CFR part 60, appendix A. The revision to Colorado's SIP and regulations adds an additional exemption to Section III.B for air curtain destructors that are subject to 40 CFR part 60.

Under the definition set forth in Colorado's Common Provisions Regulation, 5 Colo. Code. Regs. § 1001–2, air curtain destructors are considered incinerators, if they are subject to New Source Performance Standards (NSPS) for incinerators in 40 CFR part 60. However, at the time Section III.B of Regulation 1 was enacted, there were no federal NSPS requirements governing air curtain destructors. Air curtain destructors were not considered incinerators and were not subject to 40 CFR part 60. On December 1, 2000, EPA promulgated NSPS for Commercial and Industrial Waste Incineration Units at 40 CFR part 60, subpart CCCC. On December 16, 2005, EPA promulgated NSPS for Other Solid Waste Incineration Units at 40 CFR part 60, subpart EEEE. Both standards apply to air curtain destructors that meet limited applicability criteria and establish opacity standards and appropriate performance testing requirements for those units.

Prior to the revision, Regulation Number 1, Section III.B required that air curtain destructors subject to incinerator requirements under 40 CFR part 60 meet state grain loading standards and performance testing requirements, as specified in 40 CFR part 60, appendix A, to demonstrate compliance with these standards. It is not feasible, however, to conduct such performance tests on air curtain destructors due to their lack of a distinct stack. Colorado has revised its regulations to exempt air curtain destructors from these requirements in order to ensure that air curtain destructors are subject to appropriate and reasonable performance test requirements. Accordingly, Regulation Number 1, Section III.B has been revised to clarify that air curtain destructors subject to 40 CFR part 60 are not subject to Section III.B. This revision will result in the requirement for air curtain destructors subject to NSPS to meet the standards and conduct performance testing as provided in 40 CFR part 60, subpart CCCC or 40 CFR part 60, subpart EEEE.

IV. Final Action

EPA is approving this revision to Colorado's SIP which would revise Regulation Number 1, Section III.B. This revision would exclude air curtain destructors that are subject to a NSPS from complying with infeasible performance testing requirements in Regulation Number 1, Section III.B. This revision will maintain consistency between state and federal law.

EPA considers this change to be consistent with the provisions in CAA § 110(l). CAA Section 110(l) states: "Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter." Thus, under Section 110(l), this SIP revision must not interfere with attainment or reasonable further progress or any other applicable requirement of the Act. When Section III.B was approved into Colorado's SIP, air curtain destructors were not subject to any 40 CFR part 60 requirements. Before EPA's promulgation of 40 CFR part 60, subpart CCCC and 40 CFR part, 60 subpart EEEE, air curtain destructors would not have been considered "incinerators" under the definition in the Common Provisions Regulation, 5 Colo. Code Regs. § 1001–2, and no air curtain destructors would have been regulated under Section III.B. Therefore, this revision exempting air curtain destructors from the requirements of Section III.B does not substantively change the requirements of Colorado's SIP. Because EPA's approval of this SIP revision would not interfere with reasonable further progress or any other applicable requirement of CAA, it is consistent with CAA § 110(l).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. 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 revision if adverse comments are filed. This rule will be effective July 9, 2010, without further notice unless the Agency receives adverse comments by June 9, 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 the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this direct final action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this direct final action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: December 15, 2009.

Carol Rushin,

Acting Regional Administrator, Region 8.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart G—Colorado

■ 2. Section 52.320 is amended by revising (c)(114) to read as follows:

§ 52.320 Identification of Plan.

* * * * *

(c) * * *

(114) On August 1, 2007, the State of Colorado submitted revisions to Colorado Regulation 1 to be incorporated into the Colorado SIP. The submittal revises Section I.I.I.B.2. by adding "and air curtain destructors subject to 40 CFR 60" to the first sentence of Section I.I.I.B.2.

(i) Incorporation by reference.

(A) 5 CCR 1001–3, Code of Colorado Regulations, Regulation Number 1, Emission Control for Particulates, Smokes, Carbon Monoxide and Sulfur Oxides, PARTICULATE MATTER, Section III.B.2, "Incinerators," effective on November 30, 2006. Published in Colorado Register, Volume 29, Number 11.

* * * * *

[FR Doc. 2010–10568 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0573; FRL–9146–5]

Disapproval of State Implementation Plan Revisions, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing disapproval of a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on September 8, 2009 and concerns volatile organic compound (VOC) emissions from polymeric foam manufacturing operations. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action identifies several deficiencies in SCAQMD Rule 1175.

DATES: *Effective Date:* This rule is effective on June 9, 2010.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2009–0573 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: Andrew Steckel, EPA Region IX, (415) 947–4115, *Steckel.andrew@epa.gov.*

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

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I. Proposed Action

On September 8, 2009 (74 FR 46044), EPA proposed to disapprove the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule Number	Rule title	Adopted	Submitted
SCAQMD	1175	Control of Emissions from the Manufacturing of Polymeric Cellular (Foam) Products.	09/07/07	03/07/08

We proposed to disapprove this rule because some rule provisions do not satisfy the requirements of section 110 and part D of the Act. These provisions include the following:

A. The rule must require demonstration, through source testing approved in writing by the Executive Officer, that the systems and techniques in place at a facility achieve 93% collection and reduction of emissions for sources complying with paragraph (c)(4)(B)(iii).

B. The rule must clarify that all operational techniques and parameters needed to achieve 93% control to comply with paragraph (c)(4)(B)(iii) must be clearly defined and enforceable through a federally enforceable permit such as a Title V operating permit.[1] Rule 1175 should also be revised where possible to identify these parameters.

[1] SCAQMD implements a combined Title I preconstruction and Title V operating permit program.

C. The rule must clarify that all operational techniques and parameters needed to achieve 90% collection and 95% destruction to comply with paragraphs (c)(4)(B)(i) and (ii) must be clearly defined and enforceable through a federally enforceable permit such as a Title V operating permit. Rule 1175 should also be revised where possible to identify these parameters.

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 parties.

A. Shawn Osler, Environmental Compliance Manager, Insulfoam LLC, to Andrew Steckel, EPA, letter dated October 7, 2009.

B. Laki Tisopulos, Assistant Deputy Executive Officer, SCAQMD, to Andrew Steckel, EPA, letter dated October 8, 2009.

The comments and our responses are summarized below.

Comment #1: Insulfoam commented that EPA should reassess the proposed disapproval because the identified rule deficiencies are already adequately addressed by requirements in a Title V permit reviewed by EPA for the only facility affected by EPA's proposed disapproval of Rule 1175. Any changes to this permit would also require EPA review.

Response #1: This comment could be logically extended to suggest that no industry-specific rules are needed in SIPs as long as the state/local agency has an adequate permit program. However, EPA has long interpreted CAA Section 110(a)(2)(A) to require enforceable requirements in SIP-approved regulations, and not just rely on permits.

Comment #2: EPA should also reassess the proposed disapproval because recent SIP approvals within Region 9 indicate that EPA has not required analogous provisions as a condition of approval for all similar rules.

Response #2: The primary provision at issue in SCAQMD Rule 1175 requires 93% emission capture and control. Other SIP-approved stationary source rules that establish analogous emission capture and control requirements generally require both: (a) An initial compliance test to demonstrate the control efficiency, and (b) ongoing monitoring to demonstrate that key parameters (e.g., temperature of afterburner) are maintained consistent with the conditions demonstrated during the successful source test. The deficiencies identified by EPA's proposed disapproval are unusual because Rule 1175 fails to require either initial compliance testing or sufficient ongoing monitoring. We also note that the comment does not identify any specific inconsistent SIP approvals.

Comment #3: At a minimum, EPA should consider partial or conditional approval of Rule 1175 instead of full disapproval.

Response #3: Bethlehem Steel Corp. v. *Gorsuch* (742 F. Second 1028 Seventh Circuit, 1984) limits EPA's ability to publish partial approvals. If we could partially approve Rule 1175, we would likely need to exclude the new 93% compliance option that is the primary subject of our proposed limited disapproval which would have the same effect as our full disapproval action as proposed. *See* Response #7 below regarding conditional approvals.

Comment #4: SCAQMD commented that the pre-September 7, 2007 version of Rule 1175 has served as a model to the rest of the country and has been approved into the SIP without any of the issues raised by EPA.

Response #4: We agree with the comment and acknowledge SCAQMD's leadership in regulating this industry. We note that: (a) The issues we have identified as deficiencies are largely raised by the September 7, 2007 revisions; and (b) our disapproval of the September 7, 2007 version would retain the previous version in the SIP, which has served as a model rule.

Comment #5: The September 7, 2007 amendment further improves the efficacy of the rule by providing the one block foam manufacturer in South Coast with an environmentally superior alternative compliance option.

Response #5: The deficiencies identified in our proposed disapproval largely address our concerns that the new alternative compliance option, as described in the rule, is not adequately enforceable.

Comment #6: The revisions suggested by EPA are not necessary and of limited usefulness at best because SCAQMD already includes permit conditions establishing the required parameters and source testing as EPA requested.

Response #6: See Response #1.

Comment #7: If EPA declines to fully approve the rule, SCAQMD prefers a conditional approval pursuant to CAA Section 110(k)(4) in lieu of the proposed disapproval.

Response #7: The State has not fulfilled the requirements of CAA Section 100(k)(4) for a conditional approval, which include a commitment from the State to adopt specific enforceable measures by a certain date.

Comment #8: Prompt approval of Rule 1175 will expedite implementation by the one affected facility of the environmentally superior alternative compliance option provided in paragraph (c)(4)(B)(iii).

Response #8: While we are not opining on whether paragraph (c)(4)(B)(iii) provides an environmentally superior alternative compliance option, we do not believe that this and related paragraphs in Rule 1175 are fully enforceable as discussed in our proposed action and required by CAA Section 110(a).

Comment #9: AQMD staff will be prepared to develop an administrative amendment that would explicitly require source testing and permits be obtained by any impacted facility.

Response #9: We believe such a rule amendment would address the deficiencies identified in our proposal and we look forward to working with SCAQMD on specific rule text. See also Response #7 above.

Comment #10: AQMD staff would object to the notion that specific parameters be identified in the rule. To establish industry-wide operational parameters within the rule is impractical and that level of detail is best left to be identified during the permitting process.

Response #10: We concur with this comment and believe it is consistent with our proposed action.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, EPA is finalizing a full disapproval of the submitted rule. This action retains the existing SIP rule in the SIP. There are no sanction or FIP implications of this action pursuant to CAA Sections 179 or 110(c), as this is not a required CAA submittal.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

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 disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply disapprove requirements that the State is already imposing. Therefore, because the Federal SIP approval 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 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 disapproves 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 disapproves 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 disapproves 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. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

Executive Order 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 lacks the discretionary authority to address environmental justice in this proposed rulemaking. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely disapproves certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

K. 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 June 9, 2010.

L. 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 July 9, 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 18, 2010.

Jared Blumenfeld,

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 52.242 is amended by adding paragraph (a)(1)(iii) to read as follows:

§ 52.242 Disapproved rules and regulations.

(a) * * *

(1) * * *

(iii) Rule 1175, "Control of Emissions from the Manufacturing of Polymeric Cellular (Foam) Products," submitted on March 7, 2008 and adopted on September 7, 2007.

* * * * *

[FR Doc. 2010–10921 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0286; FRL–9138–6]

Revisions to the California State Implementation Plan, Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_x) emissions from natural gas-fired water heaters, small boilers and nitric acid production facilities. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 9, 2010 without further notice, unless EPA receives adverse comments by June 9, 2010. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2010–0286], by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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: The index to the docket for this action 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: Idalia Perez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
YSAQMD	2.37	Natural Gas-Fired Water Heaters and Small Boilers	04/08/09	09/15/09
YSAQMD	2.42	Nitric Acid Production	05/13/09	09/15/09

On January 21, 2010, EPA determined that the submittals for YSAQMD 2.37 and 2.42 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved an earlier version of Rule 2.37 into the SIP on October 28, 1994 (64 FR 57991). There are no previous versions of Rules 2.42 in the SIP.

C. What is the purpose of the submitted rules?

NO_x helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_x emissions. Rule 2.37 limits NO_x emissions from water heaters and boilers smaller than 1.0 MMBtu/hour. Rule 2.37 was amended to expand the applicability of the rule beyond residential water heaters and strengthen the emission limits for NO_x. Rule 2.42 limits NO_x emissions from weak nitric acid production facilities. EPA's technical support documents (TSD) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The YSAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 2.42 must fulfill RACT. Even though YSAQMD regulates an ozone nonattainment area, submitted Rule 2.37 is not subject to RACT because it applies only to sources that are not major sources of NO_x.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_x Supplement), 57 FR 55620, November 25, 1992.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" 57 FR 13498, April 16, 1992; 57 FR 18070, April 28, 1992.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSD for Rule 2.42 describes additional rule revisions that we recommend for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by June 9, 2010, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 9, 2010. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of these rules and if that provision may be severed from the remainder of the rules, EPA may adopt as final those provisions of the rules that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 1, 2010.

Jared Blumenfeld,

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 paragraph (c)(377) (i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(377) * * *

(i) * * *

(B) Yolo Solano Air Quality Management District.

(1) Rule 2.37, "Natural Gas-Fired Water Heaters and Small Boilers," revised on April 8, 2009.

(2) Rule 2.42, "Nitric Acid Production," adopted on May 13, 2009.

* * * * *

[FR Doc. 2010–10943 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2009–0566; FRL–9147–8]

RIN–2060–AP59

Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2010

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA is allocating essential use allowances for import and production of Class I ozone-depleting substances (ODSs) for calendar year 2010. Essential use allowances enable a person to obtain controlled Class I ODSs through an exemption to the regulatory ban on the production and import of these chemicals, which became effective as of January 1, 1996. EPA allocates essential use allowances for production or import of a specific quantity of Class I substances solely for the designated essential purpose. The allocation in this action is 30.0 metric tons (MT) of chlorofluorocarbons (CFCs) for use in metered dose inhalers (MDIs) for 2010.

DATES: This final rule is effective May 10, 2010.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0566. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (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 electronically through *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Jeremy Arling, by regular mail: U.S.

Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by courier service or overnight express: 1301 L Street, NW., Room 1047A, Washington, DC 20005; by telephone: (202) 343–9055; or by e-mail: *arling.jeremy@epa.gov.*

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I. Basis for Allocating Essential Use Allowances

A. What are essential use allowances?

Essential use allowances are allowances to produce or import certain ozone depleting substances (ODSs) in the U.S. for purposes that have been deemed "essential" by the U.S. Government and by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol).

The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption [1] of ODSs. The elimination of production and consumption of Class I ODSs is accomplished through adherence to phaseout schedules for specific Class I ODSs,[2] which include CFCs, halons, carbon tetrachloride, and methyl chloroform. As of January 1, 1996, production and import of most Class I ODSs were phased out in developed countries, including the United States.

However, the Montreal Protocol and the Clean Air Act (the Act) provide exemptions that allow for the continued import and/or production of Class I ODSs for specific uses. Under the Montreal Protocol, exemptions may be granted for uses that are determined by the Parties to be "essential." Decision IV/25, taken by the Parties to the Protocol in 1992, established criteria for determining whether a specific use should be approved as essential, and set forth the international process for making determinations of essentiality. The criteria for an essential use, as set forth in paragraph 1 of Decision IV/25, are the following:

(a) that a use of a controlled substance should qualify as "essential" only if:

(i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(b) that production and consumption, if any, of a controlled substance for essential uses should be permitted only if:

(i) all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and

(ii) the controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances.

B. Under what authority does EPA allocate essential use allowances?

Title VI of the Act implements the Montreal Protocol for the United States.[3] Section 604(d) of the Act authorizes EPA to allow the production of limited quantities of Class I ODSs after the phaseout date for the following essential uses:

(1) Methyl Chloroform, "solely for use in essential applications (such as nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue) for which no safe and effective substitute is available." Under section 604(d)(1) of the Act, this exemption was available only until January 1, 2005. Prior to that date, EPA issued methyl chloroform allowances to the U.S. Space Shuttle and Titan Rocket programs.

(2) Medical devices (as defined in section 601(8) of the Act), "if such authorization is determined by the Commissioner [of the Food and Drug Administration], in consultation with the Administrator [of EPA] to be necessary for use in medical devices." EPA issues allowances to manufacturers of MDIs that use CFCs as propellant for the treatment of asthma and chronic obstructive pulmonary disease.

(3) Aviation safety, for which limited quantities of halon-1211, halon-1301, and halon-2402 may be produced "if the Administrator of the Federal Aviation Administration, in consultation with the Administrator [of EPA] determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes." Neither EPA nor the Parties have ever granted a request for essential use allowances for halon, because alternatives are available or because existing quantities of this substance are large enough to provide for any needs for which alternatives have not yet been developed.

An additional essential use exemption under the Montreal Protocol, as agreed in Decision X/19, is the general exemption for laboratory and analytical uses. This exemption is reflected in EPA's regulations at 40 CFR part 82, subpart A. While the Act does not specifically provide for this exemption, EPA has determined that an exemption for essential laboratory and analytical uses is allowable under the Act as a *de minimis* exemption. The *de minimis* exemption is addressed in EPA's final rule of March 13, 2001 (66 FR 14760–14770). The Parties to the Protocol subsequently agreed (Decision XI/15) that the general exemption does not apply to the following uses: testing of oil and grease, and total petroleum hydrocarbons in water; testing of tar in road-paving materials; and forensic finger-printing. EPA incorporated this exemption at Appendix G to Subpart A of 40 CFR part 82 on February 11, 2002 (67 FR 6352). In a December 29, 2005, final rule, EPA extended the general exemption for laboratory and analytical uses through December 31, 2007 (70 FR 77048), in accordance with Decision XV/8 of the Parties to the Protocol. At the 19th Meeting of the Parties in September 2007, the Parties agreed to extend the global laboratory and analytical use exemption through December 31, 2011, in Decision XIX/18. In a December 27, 2007, final

[1] "Consumption" is defined as the amount of a substance produced in the United States, plus the amount imported into the United States, minus the amount exported to Parties to the Montreal Protocol (*see* Section 601(6) of the Clean Air Act).

[2] Class I ozone depleting substances are listed at 40 CFR part 82, subpart A, appendix A.

[3] *See* Section 614(b) of the Act. EPA's regulations implementing the essential use provisions of the Act and the Protocol are located in 40 CFR part 82.

rulemaking EPA took action to (1) extend the laboratory and analytical use exemption from December 31, 2007, to December 31, 2011, for specific laboratory uses, (2) apply the laboratory and analytical use exemption to the production and import of methyl bromide, and (3) eliminate the testing of organic matter in coal from the laboratory and analytical use exemption (72 FR 73264).

C. What is the process for allocating essential use allowances?

The procedure set out by Decision IV/25 calls for individual Parties to nominate essential uses and the total amount of ODSs needed for those essential uses on an annual basis. The Protocol's Technology and Economic Assessment Panel (TEAP) evaluates the nominated essential uses and makes recommendations to the Parties. The Parties make the final decisions on whether to approve a Party's essential use nomination at their annual meeting. This nomination process occurs approximately two years before the year in which the allowances would be in effect. The allowances proposed for allocation for 2010 were first nominated by the United States in January 2008.

For MDIs, EPA requests information from manufacturers about the number and type of MDIs they plan to produce, as well as the amount of CFCs necessary for production. EPA then forwards the information to the Food and Drug Administration (FDA), which determines the amount of CFCs necessary for MDIs in the coming calendar year. Based on FDA's determination, EPA proposes allocations to each eligible entity. Under the Act and the Montreal Protocol, EPA may allocate essential use allowances in quantities that together are below or equal to the total amount approved by the Parties. EPA will not allocate essential use allowances in amounts higher than the total approved by the Parties. For 2010, the Parties authorized the United States to allocate up to 92 MT of CFCs for essential uses.

II. Essential Use Allowances for Medical Devices

The following is a step-by-step list of actions EPA and FDA have taken thus far to implement the exemption for medical devices found at section 604(d)(2) of the Act for the 2010 calendar year.

1. On January 7, 2009, EPA sent letters to MDI manufacturers requesting the following information under section 114 of the Act ("114 letters"):

- The MDI product in which CFCs will be used.
- The number of units of each MDI product produced from 1/1/08 to 12/31/08.
- The number of units anticipated to be produced in 2009.
- The number of units anticipated to be produced in 2010.
- The gross target fill weight per unit (grams).
- Total amount of CFCs to be contained in the MDI product for 2010.
- The additional amount of CFCs necessary for production.
- The total CFC request per MDI product for 2010.

The 114 letters are available for review in the Air Docket ID No. EPA–HQ–OAR–2009–0566. The companies requested that their responses be treated as confidential business information; for this reason, EPA has placed the responses in the confidential portion of the docket.

2. At the end of January 2009, as required by 40 CFR 82.13(u), EPA received information from MDI manufacturers that included such data as the type and quantity of CFCs held at the end of the year (*i.e.* stocks of pre-1996 and post-1996 CFCs). The data submitted from the MDI manufacturers is available for review in the Air Docket ID No. EPA–HQ–OAR–2009–0566. The companies requested that their individual responses be treated as confidential business information; for this reason, EPA has placed the individual responses in the confidential portion of the docket.

3. On April 1, 2009, EPA sent FDA the information MDI manufacturers provided in response to the 114 letters and information required by 40 CFR 82.13(u) with a letter requesting that FDA make a determination regarding the amount of CFCs necessary for MDIs for calendar year 2010. This letter is available for review in Air Docket ID No. EPA–HQ–OAR–2009–0566.

4. On July 10, 2009, FDA sent a letter to EPA stating the amount of CFCs determined by the Commissioner to be necessary for each MDI company in 2010. This letter is available for review in the Air Docket ID No. EPA–HQ–OAR–2009–0566. FDA's letter informed EPA that it had determined that 30.0 MT of CFCs were necessary for use in medical devices in the year 2010.

With respect to the 2010 determination, FDA stated, "Our determination for the allocation of CFCs is lower than the total amount requested by manufacturers. In reaching this estimate, we took into account the sponsors' production of MDIs that used CFCs as a propellant in 2008, their estimated production in 2009, their estimated production in 2010, their anticipated essential-use allocations in 2009, and their current (as of December 31, 2008) stockpile levels. Our determination took into account any transferred CFCs as well as pre-1996 CFC amounts. Finally, we based our determination for 2010 on an estimate of the quantity of CFCs that would allow manufacturers to have adequate stockpiles at the end of 2010 consistent with the principles in paragraph 3 of Decision XVI/12 and paragraph 2 of Decision XVII/5."

The letter stated that in making its determination, FDA made the following assumptions:

- All manufacturers will receive the full essential-use allocation proposed by EPA for calendar year 2009 (74 FR 2954, January 16, 2009);
- All manufacturers will procure the full quantity of CFCs allocated to them for 2009; and
- No bulk CFCs currently held by, or allocated to, any manufacturer will be exported from the United States.

EPA has confirmed with FDA that this determination is consistent with Decision XVII/5, including language on stocks that states that Parties "shall take into account pre- and post-1996 stocks of controlled substances as described in paragraph 1(b) of Decision IV/25, such that no more than a one-year operational supply is maintained by that manufacturer." Allowing manufacturers to maintain up to a one-year operational supply accounts for unexpected variability in the demand for MDI products or other unexpected occurrences in the market and therefore ensures that MDI manufacturers are able to produce their essential use MDIs.

5. In accordance with FDA's determination, EPA proposed to allocate 30.0 MT of CFCs for the production of MDIs for the calendar year 2010 in a proposed rulemaking published on December 11, 2009 (74 FR 65719).

6. In this final rule, EPA is allocating 30.0 MT of CFCs for the production of MDIs for calendar year 2010.

III. Response to Comments

EPA received one significant comment on the proposed rule. The commenter opposed exemptions from the regulatory phaseout of CFCs. The commenter stated that five years should be the maximum number of years for granting exemptions.

Under section 604(d) of the Act, "to the extent such action is consistent with the Montreal Protocol," EPA is authorized to allow the production of limited quantities of Class I ODSs for use in medical devices "if such authorization is determined by the Commissioner [of the Food and Drug

Administration], in consultation with the Administrator [of EPA] to be necessary for use in medical devices." The Act does not specify or limit the number of years for which EPA might grant essential use allowances for the production or import of CFCs for use in medical devices. [Does the Protocol have a time limit on this point? Should address that here too.]

EPA describes above the actions and decision factors used to allocate essential use allowances. EPA believes the research and analysis supporting this final action is sound and that the allocation of CFCs for the continued manufacture of MDIs is necessary. EPA notes that the Montreal Protocol's Medical Technical Options Committee also recognized the necessity of allocating essential use allowances for CFCs for use in MDIs in 2010 by supporting the U.S. nomination.

IV. Allocation of Essential Use Allowances for Calendar Year 2010

With this action, EPA is allocating essential use allowances for calendar year 2010 to the entity listed in Table 1. These allowances are for the production or import of the specified quantity of Class I controlled substances solely for the specified essential use.

TABLE I—ESSENTIAL USE ALLOWANCES FOR CALENDAR YEAR 2010

(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Company	Chemical	2010 Quantity (metric tons)
Armstrong ...	CFC–11 or ... CFC–12 or CFC–114.	30.0

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

EPA prepared an analysis of the potential costs and benefits related to this action. This analysis is contained in the Agency's Regulatory Impact Analysis (RIA) for the entire Title VI phaseout program (U.S. Environmental Protection Agency, "Regulatory Impact Analysis: Compliance with Section 604 of the Clean Air Act for the Phaseout of Ozone Depleting Chemicals," July 1992). A copy of the analysis is available in the docket for this action and the analysis is briefly summarized here. The RIA examined the projected economic costs of a complete phaseout of consumption of ozone-depleting substances, as well as the projected benefits of phased reductions in total emissions of CFCs and other ozone-depleting substances, including essential use CFCs used for MDIs.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The recordkeeping and reporting requirements included in this action are already included in an existing information collection burden and this action does not make any changes that would affect the burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR 82.8(a) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0170. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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 a 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 impact of today's final rule on small entities, small entity is defined as: (1) A small business that is primarily engaged in pharmaceutical preparations manufacturing as defined by NAICS code 325412 with less than 750 employees; (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 which is independently owned and operated and is not dominant its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This final action will provide an otherwise unavailable benefit to those companies that are receiving essential use allowances by creating an exemption to the regulatory phaseout of chlorofluorocarbons. EPA therefore concluded that today's final rule will relieve regulatory burden for all small entities. EPA solicited comments on the potential impact of the proposed rule on small entities. EPA did not receive comments related to the potential impact of the proposed rule on small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector. This action does not impose any new requirements on any entities. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments because this rule merely allocates essential use allowances to entities under an exemption to the ban on production and import of Class I ODSs.

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. This action merely allocates essential use allowances to entities under an exemption to the ban on production and import of Class I ODSs. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed action from State and local officials.

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

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action merely allocates essential use allowances to entities under an exemption to the ban on production and import of Class I ODSs. This action does not impose substantial direct compliance costs on Indian Tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 13045 as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to EO 13045 because it implements Section 604(d)(2) of the Clean Air Act which states that the Agency shall authorize essential use exemptions should the Food and Drug Administration determine that such exemptions are necessary.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (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. This action merely allocates essential use allowances to entities under an exemption to the ban on production and import of Class I ODSs.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 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 final rule does not involve technical standards. Therefore, EPA did not consider 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 rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions.

K. 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 not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 10, 2010.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Imports, Methyl Chloroform, Ozone, Reporting and recordkeeping requirements.

Dated: April 29, 2010.

Lisa P. Jackson,

Administrator.

■ 40 CFR Part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

■ 2. Section 82.8 is amended by revising the table in paragraph (a) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

(a) * * *

TABLE I—ESSENTIAL USE ALLOWANCES FOR CALENDAR YEAR 2010

(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
Company	Chemical	2010 Quantity (metric tons)
Armstrong ...	CFC–11 or CFC–12 or CFC–114..	30.0

* * * * *

[FR Doc. 2010–10926 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 75, No. 89
Monday, May 10, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0474; Directorate Identifier 2009–NM–056–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model 4101 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: During ground maneuvering, prolonged operation with either engine in the restricted range between 82% and 90% RPM [revolutions per minute] will result in damage [e.g., cracking of the blade or hub] to the propeller assembly that could eventually result in the release of a propeller blade. EASA AD 2007–0268 [which corresponds to FAA AD 2008–13–02] was issued to require the installation of a Propeller Warning Placard and implementation of a corresponding Aircraft Flight Manual (AFM) limitation instructing the flight crew to taxi with the condition lever at FLIGHT in order to minimise the time spent by the engines in the restricted range. BAE Systems has now developed a Propeller Speed Warning System.

A released propeller blade could result in engine failure and loss of control of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by June 24, 2010.

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

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

For service information identified in this proposed AD, contact BAE Systems Regional Aircraft, 13850 McLearen Road, Herndon, Virginia 20171; telephone 703–736–1080; e-mail *raebusiness@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0474; Directorate Identifier 2009–NM–056–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

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

Discussion

On June 10, 2008, we issued AD 2008–13–02, Amendment 39–15565 (73 FR 34847, June 19, 2008). That AD requires actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2008–13–02, inadvertent high revolutions per minute (RPM) taxiing operations have been reported to have caused stress to the propeller blades, which can result in dangerous blade cracks. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0038, dated February 18, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> During ground manoeuvring, prolonged operation with either engine in the restricted range between 82% and 90% RPM [revolutions per minute] will result in damage [e.g., cracking of the blade or hub] to the propeller assembly that could eventually result in the release of a propeller blade.
>
> To correct this unsafe condition, EASA AD 2007–0268 [which corresponds to FAA AD 2008–13–02] was issued to require the installation of a Propeller Warning Placard and implementation of a corresponding

Aircraft Flight Manual (AFM) limitation, instructing the flight crew to taxi with the condition lever at FLIGHT in order to minimize the time spent by the engines in the restricted range. BAE Systems has now developed a Propeller Speed Warning System, embodiment of which will allow taxiing with the condition lever at TAXI, through the introduction of a revised Flight Manual Limitation.

For the reasons described above, this EASA AD retains the requirements of EASA AD 2007–0268, which is superseded, and requires the installation of a Propeller Speed Warning System.

A released propeller blade could result in engine failure and loss of control of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BAE Systems (Operations) Limited has issued Aircraft Change Information Bulletin J41–61–014, Section 2, Issue 7, dated August 17, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 3 products of U.S. registry.

The actions that are required by AD 2008–13–02 and retained in this proposed AD take about 2 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $25 per product. Based on these figures, the estimated cost of the currently required actions is $195 per product.

We estimate that it would take about 20 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $2,800 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $14,085, or $4,695 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15565 (73 FR 34847, June 19, 2008) and adding the following new AD:

BAE Systems (Operations) Limited: Docket No. FAA–2010–0474; Directorate Identifier 2009–NM–056–AD.

Comments Due Date

(a) We must receive comments by June 24, 2010.

Affected ADs

(b) The proposed AD supersedes AD 2008–13–02, Amendment 39–15565.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model 4101 airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 61: Propellers/Propulsors.

Reason

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

During ground maneuvreing, prolonged operation with either engine in the restricted range between 82% and 90% RPM [revolutions per minute] will result in damage [e.g., cracking of the blade or hub] to the propeller assembly that could eventually result in the release of a propeller blade.

To correct this unsafe condition, EASA AD 2007–0268 [which corresponds to FAA AD 2008–13–02] was issued to require the installation of a Propeller Warning Placard

and implementation of a corresponding Aircraft Flight Manual (AFM) limitation, instructing the flight crew to taxi with the condition lever at FLIGHT in order to minimize the time spent by the engines in the restricted range. BAE Systems has now developed a Propeller Speed Warning System, embodiment of which will allow taxiing with the condition lever at TAXI, through the introduction of a revised Flight Manual Limitation.

For the reasons described above, this EASA AD retains the requirements of EASA AD 2007–0268, which is superseded, and requires the installation of a Propeller Speed Warning System.

A released propeller blade could result in engine failure and loss of control of the airplane.

Compliance

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

Restatement of Requirements of AD–2008–13–02 With New Requirements

Actions

(g) Within 90 days after July 24, 2008 (the effective date of AD 2008–13–02), unless already done, do the following actions.

(1) Replace the existing Propeller Limitations Placard in the cockpit with a new placard, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–11–027, dated March 29, 2007.

(2) Revise the BAE Jetstream Series 4100 Flight Manual (FM) to include the information in BAE Jetstream Series 4100 General Amendment G12, approved January 2007; and BAE Jetstream Series 4100 Advance Amendment Bulletin 13, approved April 4, 2007. General Amendment G12 describes a rolling take-off technique and the reduced possibility of landing with ice contaminating the wings, and adds a Gross Height/Pressure Altitude Conversion Chart. Advance Amendment Bulletin 13 introduces procedures for placing the propeller condition levers in the Flight position during all ground maneuvering. Operate the airplane according to the procedures in General Amendment G12 and Advance Amendment Bulletin 13.

Note 1: This may be done by inserting copies of General Amendment G12 and Advance Amendment Bulletin 13 into the FM. When General Amendment G12 and Advance Amendment Bulletin 13 have been included in general revisions of the FM, the general revisions may be inserted in the FM, provided the relevant information in the general revision is identical to that in General Amendment G12 and Advance Amendment Bulletin 13.

New Requirements of This AD

Actions

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

(1) Within 6 months after the effective date of this AD, install a Propeller Speed Warning System (modification JM41674), in accordance with Section 2 of BAE Systems (Operations) Limited Aircraft Change Information Bulletin J41–61–014, Issue 7, dated August 17, 2009. Before further flight after modification, do the actions required in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Remove the placard that was installed as required by paragraph (g)(1) of this AD.

(ii) Remove BAE Jetstream Series 4100 Advance Amendment Bulletin 13, approved April 4, 2007, from the FM.

(2) Within 6 months after the effective date of this AD, revise the BAE Jetstream Series 4100 FM using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Note 2: Guidance on revising the BAE Jetstream Series 4100 FM, as required by paragraph (h)(2) of this AD, can be found in BAE Jetstream Series 4100 Particular Amendment 111, approved July 27, 2009.

FAA AD Differences

Note 3: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(j) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2009–0038, dated February 18, 2009; and the service information identified in Table 1 of this AD; for related information.

TABLE 1—SERVICE INFORMATION

Service information	Date
BAE Jetstream Series 4100 Advance Amendment Bulletin 13 to the Jetstream Series 4100 Flight Manual	April 4, 2007.
BAE Jetstream Series 4100 General Amendment G12 to the Jetstream Series 4100 Flight Manual	January 2007.
BAE Systems (Operations) Limited Aircraft Change Information Bulletin J41–61–014, Section 2, Issue 7	August 17, 2009.
BAE Systems (Operations) Limited Service Bulletin J41–11–027	March 29, 2007.

Issued in Renton, Washington, on April 30, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–10996 Filed 5–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0436; Directorate Identifier 2009–NM–230–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

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

* * * * *

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

DATES: We must receive comments on this proposed AD by June 24, 2010.

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

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0436; Directorate Identifier 2009–NM–230–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2009–37, dated September 30, 2009 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

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

This directive mandates:

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

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

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

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

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

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

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

Relevant Service Information

Bombardier has issued the service information in the following table.

TABLE—SERVICE INFORMATION

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

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 599 products of U.S. registry. We also estimate that it would take about 21 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,069,215, or $1,785 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2010–0436; Directorate Identifier 2009–NM–230–AD.

Comments Due Date

(a) We must receive comments by June 24, 2010.

Affected ADs

(b) None.

Applicability

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

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

Subject

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

Reason

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

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

This directive mandates:

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

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

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

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

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

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

Compliance

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

Actions

(g) Do the following actions.

(1) Within 30 days after the effective date of this AD, revise the Limitations and Normal Procedures sections of the Canadair Regional Jet Airplane Flight Manual (AFM), CSP A–012, to include the information in Canadair (Bombardier) Temporary Revision (TR) RJ/164–2, dated May 14, 2009. This TR introduces procedures for operation in icing conditions. Operate the airplane according to the limitations and procedures in the TR.

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

(2) Within 30 days after the effective date of this AD, revise the Airworthiness Limitations Instructions (ALI) of the Instructions for Continued Airworthiness (ICA) by incorporating the inspection requirements contained in Bombardier TR 2A–46, dated July 24, 2009, into Appendix A, "Certification Maintenance Requirements," of Part 2 of the Bombardier CL–600–2B19 Maintenance Requirements Manual (MRM). The initial compliance times for the tasks identified in Bombardier TR 2A–46, dated July 24, 2009, are specified in Table 1 of this AD.

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

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

Task	Applicabilty	Initial compliance time (whichever occurs later)	
C30–10–141–01	All airplanes	Before the accumulation of 6,000 total flight hours.	Within 5 flight hours after the effective date of this AD.
C30–10–141–03	Airplanes on which Modification Summary TC601R17494 or actions specified in Bombardier Service Bulletin 601R–30–031 have been done.	Before the accumulation of 6,000 total flight hours.	Within 5 flight hours after the effective date of this AD.
C30–10–141–05	Airplanes with outboard sufficient heat switches installed in accordance with Modification Summary TC601R17494 or actions specified in Bombardier Service Bulletin 601R–30–031 have been done.	Before the accumulation of 6,000 total flight hours.	Within 5 flight hours after the effective date of this AD.
C30–10–141–07	Airplanes with outboard sufficient heat switches installed in accordance with Modification Summary TC601R17494 or actions specified in Bombardier Service Bulletin 601R–30–031 have been done.	Before the accumulation of 6,000 total flight hours.	Within 5 flight hours after the effective date of this AD.

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

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

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

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

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

TABLE 2—ACCEPTABLE SERVICE INFORMATION

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

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

FAA AD Differences

Note 5: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York, 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

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

TABLE 3—SERVICE INFORMATION

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

Issued in Renton, Washington, on April 28, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–10884 Filed 5–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0438; Directorate Identifier 2009–NM–265–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

The heating capability of several [angle of attack] AOA transducer heating elements removed from in-service aircraft has been found to be below the minimum requirement. Also, it was discovered that a large number of AOA transducers repaired in an approved maintenance facility were not calibrated accurately.

Inaccurate calibration of the AOA transducer and/or degraded AOA transducer heating elements can result in early or late activation of the stall warning, stick shaker and stick pusher by the Stall Protection Computer (SPC).

Inaccurate calibration of the AOA transducers and/or degraded AOA transducer heating elements could result in an ineffective response to an

aerodynamic stall and reduced controllability of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by June 24, 2010.

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

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0438; Directorate Identifier 2009–NM–265–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

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

Discussion

On October 16, 2009, we issued AD 2009–22–12, Amendment 39–16065 (74 FR 55767, October 29, 2009). That AD required actions intended to address an unsafe condition on the products listed above.

When we issued AD 2009–22–12, we stated that we did not include certain actions (the inspection to determine if certain transducers are installed and replaced if necessary in paragraph (h) of this proposed AD) because the planned compliance time was not enough to give notice as AD 2009–22–12 was issued as an immediately adopted rule. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Relevant Service Information

Bombardier Inc. has issued Service Bulletin 670BA–27–053, Revision A, dated July 7, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 368 products of U.S. registry.

The actions that are required by AD 2009–22–12 and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it would take about 5 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $156,400, or $425 per product.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701:

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–16065 (74 FR 55767, October 29, 2009) and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2010–0438; Directorate Identifier 2009–NM–265–AD.

Comments Due Date

(a) We must receive comments by June 24, 2010.

Affected ADs

(b) This AD supersedes AD 2009–22–12, Amendment 39–16065.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes; certificated in any category, that are equipped with Thales angle of attack (AOA) transducers having part number (P/N) C16258AA.

Subject

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

Reason

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

The heating capability of several [angle of attack] AOA transducer heating elements removed from in-service aircraft has been found to be below the minimum requirement. Also, it was discovered that a large number of AOA transducers repaired in an approved maintenance facility were not calibrated accurately.

Inaccurate calibration of the AOA transducer and/or degraded AOA transducer heating elements can result in early or late activation of the stall warning, stick shaker and stick pusher by the Stall Protection Computer (SPC).

This [Canadian] directive mandates a periodic inspection of the inrush current to verify the AOA heating capability and replacement of the inaccurately calibrated AOA transducers.

Inaccurate calibration of the AOA transducers and/or degraded AOA transducer heating elements could result in an ineffective response to an aerodynamic stall and reduced controllability of the airplane.

Compliance

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

Restatement of Requirements of AD 2009–22–12:

(g) Do the following actions.

(1) Within the applicable compliance times specified in Table 1 of this AD: Measure the inrush current of both AOA transducers, in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–051, dated May 14, 2009.

TABLE 1—INITIAL MEASUREMENT

For any AOA transducer that, as of November 13, 2009 (the effective date of AD 2009–22–12), has accumulated—	Do the initial inrush current measurement—
Less than 6,500 total flight hours	Before the AOA transducer has accumulated 7,500 total flight hours.
More than or equal to 6,500 total flight hours but less than 7,500 total flight hours.	Within 500 flight hours after November 13, 2009 (the effective date of AD 2009-22–12), but before the AOA transducer has accumulated 8,000 total flight hours.
More than or equal to 7,500 total flight hours	Within 250 flight hours after November 13, 2009.

(2) If, during any measurement required by paragraph (g)(1) of this AD, an AOA transducer is found to have an inrush current less than 1.60 amps ("degraded" transducer), before further flight replace the transducer with a new or serviceable transducer, in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–051, dated May 14, 2009. Do the measurement specified in paragraph (g)(1) of this AD for that replacement transducer at the times specified in (g)(2)(i) or (g)(2)(ii) of this AD.

(i) At the applicable time specified in Table 2 of this AD if the degraded transducer was replaced with a serviceable transducer that is not new; or

(ii) Within 2,000 flight hours after replacement if the degraded transducer was replaced with a new one.

(3) If, during any measurement required by paragraph (g)(1) of this AD, an AOA transducer is found to have an inrush current more than or equal to 1.60 amps, repeat the measurement specified in paragraph (g)(1) of this AD thereafter at intervals not to exceed the applicable interval specified in Table 2 of this AD.

TABLE 2—REPETITIVE MEASUREMENT INTERVALS

If the last inrush current measurement of the serviceable AOA transducer is—	Then repeat the measurement—
More than or equal to 1.90 amps	Within 2,000 flight hours after the last measurement.
More than or equal to 1.80 amps but less than 1.90 amps	Within 1,500 flight hours after the last measurement.
More than or equal to 1.70 amps but less than 1.80 amps	Within 1,000 flight hours after the last measurement.
More than or equal to 1.60 amps but less than 1.70 amps	Within 500 flight hours after the last measurement.

New Requirements of This AD

(h) Within 6,000 flight hours after the effective date of this AD: Do an inspection to determine the serial number of the AOA transducer having P/N C16258AA, and to determine if the serial number has suffix "A," in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–053, Revision A, dated July 7, 2009.

(1) If the serial number is not specified in paragraph 1.A.(1) of Bombardier Service Bulletin 670BA–27–053, Revision A, dated July 7, 2009, no further action is required by this paragraph.

(2) If the serial number is specified in paragraph 1.A.(1) of Bombardier Service Bulletin 670BA–27–053, Revision A, dated July 7, 2009, and the serial number has a suffix "A," no further action is required by this paragraph.

(3) If the serial number is specified in paragraph 1.A.(1) of Bombardier Service Bulletin 670BA–27–053, Revision A, dated July 7, 2009, and the serial number does not have suffix "A," before further flight, replace the AOA transducer with a serviceable transducer, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–053, Revision A, dated July 7, 2009.

(i) As of the effective date of this AD, no person may install, on any airplane, an AOA transducer having P/N C16258AA with any serial number specified in paragraph 1.A.(1) of Bombardier Service Bulletin 670BA–27–053, Revision A, dated July 7, 2009, unless the serial number has a suffix "A."

(j) Inspections and replacements accomplished before the effective date of this AD according to Bombardier Service Bulletin 670BA–27–051, dated May 14, 2009, are considered acceptable for compliance with the corresponding actions specified in this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York, 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(l) Refer to MCAI Canadian Airworthiness Directive CF–2009–35, dated August 31, 2009; Bombardier Service Bulletin 670BA–27–051, dated May 14, 2009; and Bombardier Service Bulletin 670BA–27–053, Revision A, dated July 7, 2009; for related information.

Issued in Renton, Washington, on April 29, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–10887 Filed 5–7–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0092]

RIN 1625–AA08

Regulated Navigation Area: Red Bull Air Race World Championship, Upper New York Bay, Lower Hudson River, NJ and NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary regulated navigation area on the navigable waters of the lower Hudson River and Upper New York Bay in the vicinity of Liberty State Park, New Jersey and Ellis Island, New Jersey and New York for the Red Bull Air Race World Championship, an event scheduled to be held over water. This regulation is necessary to protect participants and spectators from the hazards associated with air races. This proposed action is intended to restrict vessel traffic in a portion of the lower Hudson River and Upper New York Bay during the event.

DATES: Comments and related material must be received by the Coast Guard on or before June 9, 2010.

Requests for public meetings must be received by the Coast Guard on or before June 9, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0092 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LTJG Eunice James, Coast Guard Sector New York Waterways Management Division, Marine Events Branch; telephone 718–354–4163, e-mail *Eunice.A.James@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0092), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0092" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0092" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

Red Bull Air Race GmbH is sponsoring the Red Bull Air Race World Championship event on and over the waters of the lower Hudson River and Upper New Bay, in the vicinity of Liberty State Park, NJ and Ellis Island, NJ and NY on June 17, 2010 through June 20, 2010.

The event will feature lightweight racing planes, performing low-flying, high speed precision maneuvers while navigating a low-level aerial track made up of air-filled pylons. The objective is for pilots to complete the course in the fastest time while safely navigating specially designed inflatable pylons known as "Air Gates" that will be strategically placed in the water to form the race course. The event organizer will commence setting up the race course and placing the Air Gates in position, on June 14 through June 16, 2010.

It is anticipated that spectator vessels will gather nearby to view the event. To provide for the safety of participants, support vessels, spectators and transiting vessels, the Coast Guard Captain of the Port New York will temporarily restrict vessel traffic during the event.

Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary regulated navigation area on specified waters of the Hudson River and Upper New York Bay. The regulated area will encompass all waters of Upper New York Bay and the Hudson River, bound by the following points (NAD 83):

40°42′31.8″ N, 074°02′04.0″ W; thence to 40°42′36.3″ N, 074°01′47.9″ W; thence to 40°42′34.1″ N, 074°01′28.6″ W; thence to 40°42′07.5″ N, 074°01′26.4″ W; thence to 40°41′17.5″ N, 074°02′07.3″ W; thence to 40°41′46.2″ N, 074°03′04.0″ W; and bound by the shoreline in the vicinity of Liberty State Park, NJ. The Captain of the Port New York will establish spectator vessel viewing areas within the boundaries of the regulated area. Access to the spectator vessel viewing areas will be restricted to vessels based on vessel size.

This proposed rule is intended to ensure the safety of the public and vessels during the event and during scheduled activities related to the event associated with the Red Bull Air Race Championship event.

The regulations will be in effect daily from 8 a.m. to 6 p.m., June 17th through June 20th, 2010. On June 17–20, 2010, the restrictions will be enforced as needed and therefore will be intermittent. On June 17–18, 2010, the restrictions on the regulated area closure will total no more than 5 hours between the hours of 8 a.m. to 6 p.m. On June 19–20, 2010, the regulated area closure will total no more than 6 hours between the hours of 8 a.m. to 6 p.m. The effect will be to restrict general navigation in the regulated area during the event and during scheduled activities related to the event. Except for persons or vessels authorized by the Coast Guard Captain of the Port New York or the designated representative, no person or vessel may enter or remain in the regulated area during the enforcement period. The Captain of the Port New York will notify the public of specific enforcement times by Marine Radio Safety Broadcast.

Regulatory Analyses

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

Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory

Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Although this proposed rule prevents vessels from transiting a portion of the Hudson River and Upper New York Bay during the event, the effect of this regulation will not be significant due to the limited duration the regulated area will be in effect and enforced. In addition, advance notifications will be made to the maritime community via information broadcasts, and local notice to mariners.

Small Entities

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

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

This rule will affect the following entities: The owners and operators of vessels intending to transit or anchor in a portion of the lower Hudson River and Upper New York Bay in the vicinity of Liberty State Park, NJ between 10 a.m. June 17, 2010 to 6 p.m. June 20, 2010.

This proposed regulated navigation area will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulated area would be activated for four days, and subject to enforcement, for approximately 6 hours each day when participating vessels and aircrafts are in the area. Vessel traffic can safely transit all waters outside the regulated area during the event. Before the effective period, we will issue maritime advisories widely available to users of the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG Eunice James, office: (718) 354–4163, email: *Eunice.A.James@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of regulated areas, including two spectator vessel viewing areas for a marine event which a permit application was made.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

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

Authority: 33 U.S.C. 1226; 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 6.05; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01–0092 to read as follows:

§ 165.T01–0092 Regulated Navigation Area; Red Bull Air Race Championship, Upper New York Bay and Hudson River, New York.

(a) *Regulated Navigation Area.* The regulated area includes all waters of Upper New York Bay and the lower Hudson River bound by the following points (NAD 83): 40°42′31.8″ N, 074°02′04.0″ W; thence to 40°42′36.3″ N, 74°01′47.9″ W; thence to 40°42′34.1″ N, 074°01′28.6″ W; thence to 40°42′07.5″ N, 074°01′26.4″ W; thence to 40°41′17.5″ N, 074°02′07.3″ W; thence to 40°41′46.2″ N, 074°03′04.0″ W; thence along the shoreline to the point of origin. Within this area, the Captain of the Port New York may establish—

(b) *Definition.* As used in this section, "designated representative" means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Captain of the Port Sector New York.

Regulations. (1) No person or vessel may enter, transit, or remain in the regulated area, unless participating in the event or unless authorized by the Coast Guard Captain of the Port New York or designated representative.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port New York or the designated on-scene representative. Upon being hailed by a Coast Guard or other law enforcement vessel by siren, radio, flashing light, or other means the operator of a vessel shall proceed as directed.

(c) Enforcement period. The regulated area will be enforced daily from 8 a.m. to 6 p.m. on June 17 through June 20, 2010.

Dated: May 4, 2010.

J.A. Servidio,

Captain, U.S. Coast Guard, Acting, Commander, First Coast Guard District.

[FR Doc. 2010–10946 Filed 5–7–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0290; FRL–9142–8]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; General Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request submitted by the Ohio Environmental Protection Agency (Ohio EPA) on March 17, 2009, to revise the Ohio State Implementation Plan (SIP) under the Clean Air Act (CAA). The State has submitted revisions to rules for approval under Chapter 3745–15, "General Provisions," of the Ohio Administrative Code (OAC). The State's revisions to OAC 3745–15–01 include adoption of the Federal definition and citation of the CAA, and the revisions to OAC 3745–15–05 include clarifications for exemptions and new requirements for sources regulated under Title V.

DATES: Comments must be received on or before June 9, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0290, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: bortzer.jay@epa.gov.*

3. *Fax:* (312) 692–2054.

4. *Mail:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Jay Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Andy Chang, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0258, *chang.andy@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because EPA views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period; therefore, any parties interested in commenting on this action should 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. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: April 19, 2010.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. 2010–10835 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2009–0790; FRL–9114–4]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation Number 1

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to approve State Implementation Plan revisions submitted by the State of Colorado on August 3, 2007 to Colorado's Regulation Number 1 (revisions to the performance testing requirements for air curtain destructors). Colorado adopted these rule revisions on October 2, 2006. All other actions submitted by the State of Colorado concurrent with Colorado's Regulation Number 1 revision request will be acted on at a later date. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a non-controversial SIP revision 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.

DATES: Comments must be received on or before June 9, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2009–0790, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: videtich.callie@epa.gov* and *leone.kevin@epa.gov*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie A. Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Callie A. Videtich, 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–2009–0790. 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.* 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 *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 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: Kevin Leone, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6227, or *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION: 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: December 15, 2009.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. 2010–10565 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0286; FRL–9138–7]

Revisions to the California State Implementation Plan, Yolo Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NOx) emissions from natural gas-fired water heaters, small boilers and nitric acid production facilities. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by June 9, 2010.

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2010–0286], by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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: The index to the docket for this action 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: Idalia Perez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules:

1. Rule 2.37, Natural Gas-Fired Water Heaters and Small Boilers

2. Rule 2.42, Nitric Acid Production.

In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of these rules and if that provision may be severed from the remainder of these rules, we may adopt as final those provisions of the rules that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 1, 2010.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2010–10944 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2009–0286; FRL–9147–9]

RIN 2060–AP54

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—Hydrocarbon Refrigerants

AGENCY: Environmental Protection Agency, (EPA).

ACTION: Proposed rulemaking.

SUMMARY: Pursuant to the U.S. Environmental Protection Agency's Significant New Alternatives Policy program, this action proposes to list isobutane, propane, HCR–188C, and HCR–188C1 as "acceptable, subject to use conditions," as substitutes for chlorofluorocarbon (CFC)–12, also referred to as R–12, CCl_2F_2 and dichlorodifluoromethane and hydrochlorofluorocarbon (HCFC)–22, also referred to as R–22, $CHClF_2$, chlorodifluoromethane and difluorochloromethane, in household refrigerators, freezers, and combination refrigerator and freezers and commercial refrigeration (retail food refrigerators and freezers—stand-alone units only).

DATES: Comments must be received on or before July 9, 2010, unless a public hearing is requested. Comments must then be received on or before July 26, 2010. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Daylight Time on May 20, 2010. If a hearing is held, it will take place on May 25, 2010 in Washington, DC and further information will be provided on EPA's Stratospheric Ozone World Wide Web site at *http://www.epa.gov/ozone/snap.*

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0286, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: A-And-R-Docket@epa.gov.*
- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2009–0286.
- *Hand Delivery:* EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2009–0286. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0286. 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 *www.regulations.gov* Web sites 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 instructions on submitting comments, go to Section I.B. of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* 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 electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Monica Shimamura, Stratospheric Protection Division, Office of Atmospheric Programs, Mail Code 6205J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number (202) 343–9337; fax number (202) 343–2362, e-mail address: *shimamura.monica@epa.gov.* Notices and rulemakings under EPA's Significant New Alternatives Policy (SNAP) program are available on EPA's Stratospheric Ozone World Wide Web site at *www.epa.gov/ozone/snap/regs*.

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IX. References

I. General Information

A. Background

This rule pertains to four hydrocarbon refrigerants: isobutane, propane and HCR–188C and HCR–188C1. Globally, hydrocarbon refrigerants have been in use for over 10 years including in countries such as Germany, the United Kingdom, Australia, and Japan. In Europe and Asia, equipment manufactures have designed and tested household and commercial refrigerators and freezers to account flammability and safety concerns associated with using hydrocarbon refrigerants. Due to the fact that hydrocarbon refrigerants have zero ozone depletion potential (ODP) and very low global warming potential (GWP), many companies are interested in using hydrocarbon refrigerants in the United States (U.S.) as well. In this action EPA has received four SNAP submissions for use of hydrocarbon refrigerants in household refrigerators, freezers, combination refrigerator and freezers and retail food refrigerators and freezers (stand-alone only).

B. Does this action apply to me?

This notice of proposed rulemaking (NPRM) would regulate the use of four alternative refrigerants used in: Household refrigerators and freezers and commercial refrigeration (retail food refrigeration—stand-alone units only).[1] Potentially entities that may wish to use isobutane (R–600a), propane (R–290), HCR–188C, or HCR–188C1 in these end-uses, include:

TABLE 1—POTENTIALLY REGULATED ENTITIES BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE OR SUBSECTOR

Category	NAICS code or subsector	Description of regulated entities
Industry	333415	Manufactures of refrigerators, freezers, and other refrigerating or freezing equipment, electric or other; heat pumps not elsewhere specified or included (NESOI); and parts thereof.
Industry	443111	Appliance Stores: Household-type.
Industry	445120	Convenience Stores.
Industry	445110	Supermarkets and Other Grocery (except Convenience) Stores.
Industry	722211	Limited-Service Restaurants.
Industry	238220	Plumbing, Heating, and Air Conditioning Contractors.

[1] HCR–188C and HCR–188C1 submissions included window air conditioners as an end use. EPA is acting on this end use in a separate rule making.

TABLE 1—POTENTIALLY REGULATED ENTITIES BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE OR SUBSECTOR—Continued

Category	NAICS code or subsector	Description of regulated entities
Industry	811412	Appliance Repair and Maintenance.
Industry	541380	Environmental Testing Laboratories.
Industry	423620	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers.
Industry	423740	Refrigeration Equipment and Supplies Merchant Wholesalers.

This table is not intended to be exhaustive, but rather a guide regarding entities likely to use the substitute whose use is regulated by this action. If you have any questions about whether this action applies to a particular entity, consult the person listed in the preceding section, **FOR FURTHER INFORMATION CONTACT.**

C. What should I consider as I prepare my comments for EPA?

1. Submitting Confidential Business Information (CBI).

Do not submit confidential information to EPA through *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 marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (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 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.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

D. What acronyms and abbreviations are used in the preamble?

Below is a list of acronyms and abbreviations used in the preamble of this NPRM.

ACH—air changes per hour
AEGL—Acute Exposure Guideline Level
ASHRAE—American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc.
ANSI—American National Standards Institute
CAA—Clean Air Act
CAS Reg. No—Chemical Abstracts Service Registry Identification Number
CBI—Confidential Business Information
CFC—chlorofluorocarbon
cfm—cubic feet per minute
CFR—Code of Federal Regulations
EPA—the United States Environmental Protection Agency
FR—Federal Register
GWP—global warming potential
HC—hydrocarbon
HCFC—hydrochlorofluorocarbon
HFC—hydroflurocarbon
ICF—ICF International, Inc.
IDLH—Immediately dangerous to life or health
ICR—Information Collection Request
LFL—lower flammability limit
mg/l—milligrams per liter
MSDS—Material Safety Data Sheet
NAICS—North American Industrial Classification System
NIOSH—the U.S. National Institute for Occupational Safety and Health
NPRM—Notice of Proposed Rulemaking
OEM—original equipment manufacturer
ODP—ozone depletion potential
ODS—ozone-depleting substance
OMB—the United States Office of Management and Budget
OSHA—the United States Occupational Safety and Health Administration
PELs —permissible exposure limits
ppm—parts per million
REL—Recommended exposure limit
RFA—Regulatory Flexibility Act
RfC—reference concentration
SNAP—Significant New Alternatives Policy
TSCA—Toxic Substances Control Act
TWA —time weighted average
UL—Underwriters Laboratories Inc.
VOC—volatile organic compound

II. How does the Significant New Alternatives Policy (SNAP) program work?

A. What are the statutory requirements and authority for the SNAP program?

Section 612 of the Clean Air Act (CAA) requires EPA to develop a program for evaluating alternatives to ozone-depleting substances (ODS). EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

1. Rulemaking

Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (*i.e.,* chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, methyl bromide, and hydrobromofluorocarbon) or class II (*i.e.,* hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

2. Listing of Unacceptable/Acceptable Substitutes

Section 612(c) requires EPA to publish a list of the substitutes unacceptable for specific uses and to publish a corresponding list of acceptable alternatives for specific uses. The list of acceptable substitutes is found at *http://www.epa.gov/Ozone/snap/lists/index.html* and the lists of "unacceptable", "acceptable subject to use conditions", and "acceptable subject to narrowed use limits" is found at 40 CFR part 82 subpart G.

3. Petition Process

Section 612(d) grants the right to any person to petition EPA to add a substance to, or delete a substance from, the lists published in accordance with

section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

4. 90-Day Notification

Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

5. Outreach

Section 612(b)(1) states that the Administrator shall seek to maximize the use of Federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

6. Clearinghouse

Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. What are EPA's regulations implementing section 612?

On March 18, 1994, EPA published the original rulemaking (59 FR 13044) which established the process for administering the SNAP program and issued EPA's first lists identifying acceptable and unacceptable substitutes in the major industrial use sectors (40 CFR part 82, subpart G). These sectors include: Refrigeration and air conditioning; foam blowing; cleaning solvents; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors compose the principal industrial sectors that historically consumed the largest volumes of ODS.

Section 612 of the CAA requires EPA to ensure that substitutes found acceptable do not prevent a significantly greater risk to human health and the environment as compared with other substitutes that are currently or potentially available.

C. How do the regulations for the SNAP program work?

Under the SNAP regulations, anyone who plans to market or produce a substitute for class I or II ODS in one of the eight major industrial use sectors must provide the Agency with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to the person planning to introduce the substitute into interstate commerce,[2] typically chemical manufacturers, but may also include importers, formulators, equipment manufacturers, or end-users [3] when they are responsible for introducing a substitute into commerce. In this proposed rule we are addressing SNAP submissions from three companies interested in introducing into interstate commerce products that contain hydrocarbon refrigerants.

The Agency has identified four possible decision categories for substitutes: Acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable. Use conditions and narrowed use limits are both considered "use restrictions" and are explained below. Substitutes that are deemed acceptable with no use restrictions (no use conditions or narrowed use limits) can be used for all applications within the relevant end-uses within the sector. Substitutes that are acceptable subject to use restrictions may be used only in accordance with those restrictions. It is illegal to replace an ODS with a substitute listed as unacceptable, unless certain exceptions (*e.g.* test marketing, research and development) provided by the regulation are met.

After reviewing a substitute, the Agency may make a determination that a substitute is acceptable only if certain conditions in the way that the substitute is used are met to minimize risks to human health and the environment. EPA describes such substitutes as "acceptable subject to use conditions." Entities that use these substitutes without meeting the associated use conditions are in violation of section 612 of the Clean Air Act.

For some substitutes, the Agency may permit a narrowed range of use within an end-use or sector. For example, the Agency may limit the use of a substitute to certain end-uses or specific applications within an industry sector. The Agency requires a user of a narrowed use substitute to demonstrate that no other acceptable substitutes are available for their specific application by conducting comprehensive studies. EPA describes these substitutes as "acceptable subject to narrowed use limits." A person using a substitute that is acceptable subject to narrowed use limits in applications and end-uses that are not consistent with the narrowed use limit, are using these substitutes in an unacceptable manner and are in violation of section 612 of the Clean Air Act.

The Agency publishes its SNAP program decisions in the Federal Register (FR). EPA publishes decisions concerning substitutes that are deemed acceptable subject to use restrictions (use conditions and/or narrowed use limits), or for substitutes deemed unacceptable, as proposed rulemakings to allow the public opportunity to comment, before publishing final decisions.

In contrast, EPA publishes substitutes that are deemed acceptable with no restrictions in "notices of acceptability," rather than as proposed and final rules. As described in the rule initially implementing the SNAP program (59 FR 13044), EPA does not believe that rulemaking procedures are necessary to list alternatives that are acceptable without restrictions because such listings neither impose any sanction nor prevent anyone from using a substitute.

Many SNAP listings include "comments" or "further information" to provide additional information on substitutes. Since this additional information is not part of the regulatory decision, these statements are not binding for use of the substitute under the SNAP program. However, regulatory requirements so listed are binding under other regulatory programs. The "further information" classification does not necessarily include all other legal obligations pertaining to the use of the substitute. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the "further information" column in their use of these substitutes. In many instances, the information simply refers to sound operating practices that have

[2] As defined at 40 CFR 82.104 "*interstate commerce*" means the distribution or transportation of any product between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or District of Columbia. The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States Customs clearance.

[3] As defined at 40 CFR 82.17 "*end-use*" means processes or classes of specific applications within major industrial sectors where a substitute is used to replace an ozone-depleting substance.

already been identified in existing industry and/or building-codes or standards. Thus, many of the comments, if adopted, would not require the affected user to make significant changes in existing operating practices.

D. Where can I get additional information about the SNAP program?

For copies of the comprehensive SNAP lists of substitutes or additional information on SNAP, refer to EPA's Ozone Depletion Web site at *http://www.epa.gov/ozone/snap/index.html.* For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published March 18, 1994 (59 FR 13044), codified at 40 CFR part 82, subpart G. A complete chronology of SNAP decisions and the appropriate citations are found at *http://www.epa.gov/ozone/snap/chron.html.*

III. What substitutes for ozone-depleting substances in what end-uses are considered in this rule?

A. What is EPA proposing in this action?

In this action, EPA proposes to list the following:

(1) Isobutane, also referred to by the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) refrigerant designation R–600a, and the proprietary hydrocarbon blends HCR–188C and HCR–188C1, as acceptable subject to use conditions as a substitute for CFC–12 [4] in household refrigerators, freezers, and combination refrigerator and freezers. EPA proposes the following use conditions:

1. The quantity of the substitute refrigerant (*i.e.,* "charge size") shall not exceed 57 grams (2.0 ounces) in any refrigerator, freezer, or combination refrigerator and freezers;

2. These refrigerants may be used only in new equipment designed specifically and clearly identified for the refrigerant (*i.e.,* none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment);

3. These refrigerants may be used only in refrigerators or freezers or combination refrigerator and freezers that meet all requirements listed in the 10th edition of Underwriters Laboratory (UL) Standard 250. In cases where the final rule includes requirements more stringent than those of the 10th edition of UL Standard 250, the appliance must meet the requirements of the final rule in place of the requirements in the UL Standard;

4. The refrigerator, freezer, or combination refrigerator and freezer must have red, Pantone Matching System (PMS) #185 marked pipes, hoses, or other devices through which the refrigerant passes to indicate the use of a flammable refrigerant. This color must be applied at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch in both directions from such locations;

5. Similar to clauses SA6.1.1 to SA6.1.2 of UL standard 250, the following markings, or the equivalent, shall be provided and shall be permanent:

(a) "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing."

(b) "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing."

(c) "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed."

(d) "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used."

(e) "CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used."

The marking described in clause (a) above shall be permanently attached on or near any evaporators that can be contacted by the consumer. The markings described in clauses (b) and (c) above shall be permanently attached near the machine compartment. The markings described in clause (d) above shall be permanently attached on the exterior of the refrigerator. The marking described in clause (e) above shall be permanently attached near any and all exposed refrigerant tubing. All of these markings shall be in letters no less than 6.4 mm (¼ inch) high.

6. Household refrigerators, freezers, and combination refrigerator and freezers using these refrigerants must have service aperture fittings that are colored red as described above in use condition number four and which differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either that the diameter must differ by at least 1/16 inch or the thread direction must be reversed (*i.e.,* right handed vs. left handed). These different fittings must be permanently affixed to the unit and may not be accessed with an adaptor until the end-of-life of the unit;

7. These refrigerants may not be sold for use as a refrigerant in containers designed to contain less than five pounds (2.8 kg) of refrigerant.

(2) Propane, R–290,[5] as acceptable subject to use conditions as a substitute for CFC–12, R–502, or HCFC–22, in retail food refrigerators and freezers:

1. The charge size for the retail food refrigerator or freezer using R–290 shall not exceed 150 grams (5.3 ounces);

2. This refrigerant may be used only in new equipment specifically designed and clearly identified for the refrigerant;

3. This substitute may only be used in equipment that meets all requirements in the 9th edition of UL Standard 471. In cases where the final rule includes requirements more stringent than those of the 9th edition of UL Standard 471, the appliance must meet the requirements of the final rule in place of the requirements in the UL Standard;

4. The refrigerator or freezer must have red, Pantone Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant passes to indicate the use of a flammable refrigerant. This color must be applied at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected, and must extend a minimum of one (1) inch in both directions from such locations;

5. Similar to clauses SB6.1.2 to SB6.1.5 of UL Standard 471, the following markings, or the equivalent, shall be provided and shall be permanent:

(a) "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing."

(b) "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing."

(c) "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This

[4] CFC–12 is also referred to as R–12, CCl_2F_2 and dichlorodifluoromethane. Its CAS Reg. No. is 75–71–8.

[5] Propane is also known as R–290, HC–290, $CH_3CH_2CH_3$ and C_3H_8. Its CAS Reg. No. is 74–98–6.

Product. All Safety Precautions Must be Followed."

(d) "CAUTION—Risk of Fire or Explosion. Dispose of Property In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used."

(e) "CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." This marking shall be provided near all exposed refrigerant tubing.

The marking described in clause (a) above shall be permanently attached or near any evaporators that can be contacted by the consumer. The markings described in clauses (b) and (c) above shall be located near the machine compartment. The marking described in clause (d) above shall be permanently attached on the exterior of the refrigerator. The marking described in clause (e) above shall be permanently attached near any and all exposed refrigerant tubing. All of these markings shall be in letters no less than 6.4 mm (¼ inch) high.

6. Retail food refrigeration using R–290 must have fittings that are colored red as described above in use condition number four and which differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter must differ by at least 1/16 inch or the thread direction must be reversed (*i.e.,* right handed vs. left handed). These fittings must be permanently affixed to the unit, and may not be accessed with an adaptor, until the end-of-life of the unit;

7. R–290 may not be sold as a refrigerant in containers containing less than five pounds (2.8 kg) of refrigerant.

B. What are isobutane, propane, HCR–188C, and HCR–188C1?

Hydrocarbons are flammable organic compounds made up of hydrogen and carbon. Isobutane has four carbons while propane has three carbons. HCR–188C and HCR–188C1 are proprietary blends consisting of primarily or exclusively of hydrocarbons. The chemical formula for isobutane, also called 2-methylpropane, is C_4H_{10}, also written as $CH(CH_3)_2$-CH_3 to distinguish it from butane. Isobutane's identification number in the Chemical Abstracts Service's registry (CAS Reg. No.) is 75–28–5. The chemical formula for propane is C_3H_8 and its CAS Reg. No. is 74–98–6. As refrigerants, propane and isobutane can be referred to by the ASHRAE designations R–290 and R–600a, respectively.

ANSI/ASHRAE Standard 34–2007 categorizes isobutane, propane, and components of HCR–188C and HCR–188C1 in the A3 Safety Group. ASHRAE's safety group classification consists of two alphanumeric characters (*e.g.,* A2 or B1). The capital letter indicates the toxicity and the numeral denotes the flammability. ASHRAE classifies Class A refrigerants as refrigerants for which toxicity has not been identified at concentrations less than or equal to 400 ppm by volume, based on data used to determine threshold limit value-time-weighted average (TLV–TWA) or consistent indices. Class B signifies refrigerants for which there is evidence of toxicity at concentrations below 400 ppm by volume, based on data used to determine TLV–TWA or consistent indices. The refrigerants are then assigned a flammability classification from one of three classes—1, 2, or 3 based on flammability. Tests are conducted in accordance with ASTM E681 using a spark ignition source (ASHRAE 2007). Figure 1 in ANSI/ASHRAE Standard 15–2007 uses the same safety group but limits its concentration to 3400 ppm.

Figure 1. Refrigerant Safety Group Classification

Safety Group

Increasing Flammability		
Higher Flammability	A3	B3
Lower Flammability	A2	B2
No Flame Propagation	A1	B1
	Lower Toxicity	Higher Toxicity

Increasing Toxicity

C. What end-uses are included in our proposed decision?

1. Household Refrigerators, Freezers, and Combination Refrigerator and Freezers

Household refrigerators, freezers, and combination refrigerator and freezers are intended primarily for residential use, although they may be used outside the home. Household freezers only offer storage space at freezing temperatures, unlike household refrigerators. Products with both a refrigerator and freezer in a single unit are most common. In this NPRM, EPA is limiting the scope of our acceptability decisions to refrigerators and freezers and combination refrigerator and freezers with a refrigerant charge of 57 grams (2.0 ounces) or less.

2. Retail Food Refrigeration

Retail food refrigeration includes the refrigeration systems, including cold storage cases, designed to chill food or keep it at a cold temperature for commercial sale. For the purpose of this proposal we are considering the use of hydrocarbons only in stand-alone equipment. A stand-alone appliance is one utilizing a sealed hermetic compressor and for which all refrigerant-containing components, including but not limited to the compressor, condenser and evaporator, are assembled into a single piece of equipment before delivery to the ultimate consumer or user, such equipment not requiring the addition or removal of refrigerant when placed into initial operation. Stand-alone equipment is used to store chilled beverages or frozen products (*e.g.,* reach-in beverage coolers and stand-

alone ice cream cabinets). This proposed decision does not apply to large refrigeration systems such, as but not limited to, direct expansion refrigeration systems typically found in retail food stores. We are proposing as a use condition that stand-alone equipment using a hydrocarbon refrigerant have a refrigerant charge less than 150 grams (5.3 ounces).

D. Where Can I Find the Regulatory Text For These Proposed Listing Decisions?

Our proposed decisions appear in a table at the end of the document and if finalized will be codified at 40 CFR 82 subpart G. The proposed regulatory text contains proposed listing decisions for the above end-uses. EPA is proposing to find isobutane, propane, HCR–188C, and HCR–188C1 acceptable with use conditions. We note that there may be other legal obligations pertaining to the manufacture, use, handling, and disposal of hydrocarbons that are not included in the information listed in the tables (*e.g.,* section 608 prohibition on venting refrigerant or Department of Transport requirements for transport of flammable gases).

E. What Does An Acceptability Determination With Use Conditions For Isobutane, Propane, HCR–188C, and HCR–188C1 Mean?

In this action, EPA is proposing to find isobutane, propane, HCR–188C, and HCR–188C1 acceptable subject to use conditions as substitutes for CFC–12, HCFC–22, and R–502 in certain refrigeration end-uses. If this proposal were to become final, it would be legal to use isobutane, propane, HCR–188C, and HCR–188C1 in the specified types of equipment under the conditions outlined above as a substitute for ozone-depleting substances (ODS). If this proposal became final, use in the specified types of equipment that is not consistent with the use conditions would be a violation of CAA section 612 and EPA's implementing regulations.

EPA seeks comment regarding this proposal and, in particular, whether the proposed use conditions are adequate to ensure the safe and appropriate handling of hydrocarbon refrigerants.

IV. What criteria did EPA consider in preparing this proposal?

Section 612(c) of the Clean Air Act directs EPA to publish a list of acceptable replacement substances ("substitutes") for class I and class II ODS, where the Administrator determines they are safe for specific uses when compared with other currently or potentially available substitutes, and a list of prohibited substitutes for specific uses. EPA compares the risks to human health and the environment of a substitute to the risks associated with other substitutes that are currently or potentially available. EPA also considers whether the substitute for class I and class II ODSs "reduces the overall risk to human health and the environment" compared to the ODSs historically used in the end use. The criteria for review are listed at 40 CFR 82.180(a)(7). These criteria are (i) atmospheric effects and related health and environmental impacts; (ii) General population risks from ambient exposure to compounds with direct toxicity and to increased ground-level ozone; (iii) Ecosystem risks; (iv) Occupational risks; (v) Consumer risks; (vi) Flammability; and (vii) Cost and availability of the substitute.

EPA evaluated each of the criteria separately and then considered overall risk to human health and the environment in comparison to other available or potentially available alternatives in the same end-uses. EPA proposes to conclude that, overall, environmental risks posed by the four reviewed substitutes were not greater than the environmental risks posed by other substitutes in the reviewed end-uses. Because these four substitutes have zero ozone depletion potential (ODP), very low global warming potential (GWP), and are volatile organic compounds (VOCs) but insignificantly affect local air quality, the environmental risks associated with ODP GWP, and VOC effects are lower than or comparable to other acceptable substitutes. These and other environmental risks are discussed below. In addition, EPA has placed in the docket an analysis table comparing the four substitutes being proposed in this action and several substitutes that have been found acceptable in the refrigeration and air conditioning end use. The flammability risks to public health are of concern because household and retail food refrigerators and freezers have traditionally used refrigerants that are not flammable. Without mitigation, the risks posed by these refrigerants would be higher than other non-flammable refrigerants because individuals may not be aware that their actions could potentially cause a fire, and existing equipment has not been designed specifically to minimize flammable risks. Therefore, EPA is proposing use conditions to mitigate these risks to ensure that the overall risk to human health and the environment posed by these four substitutes is not greater than the overall risk posed by other substitutes in the same end use.

A. Impacts on the ecosystem

This section will include the substitutes' impact on the environment including ODP, GWP, and VOC. The ODP is the ratio of the impact on stratospheric ozone of a chemical compared to the impact of an identical mass of CFC–11. Thus, the ODP of CFC–11 is defined to be one (1.0). Other CFCs and HCFCs have ODPs that range from 0.01 to one (1.0). All four refrigerant substitutes in this proposal have an ODP of zero,[6] lower than the ODP of the substances that they would replace: CFC–12 (ODP = 1.0); HCFC–22 (ODP = 0.055); and R–502 (ODP = 0.334) (WMO, 2006). The most commonly used substitutes in these two end-uses also have an ODP of zero (*e.g.* R–404A, R–134a, R–410A, R–407C).

The GWP index is a means of quantifying the potential integrated climate forcing of various greenhouse gases relative to carbon dioxide. The 100-year integrated GWPs of isobutane, propane, HCR–188C, and HCR–188C1 are estimated to be eight, three, less than five, and less than five, respectively, compared to a value of one for CO_2 (WMO, 2006). These are significantly lower than the 100-year integrated GWPs of the substances that they would be replacing: CFC–12 (GWP = 10,890); HCFC–22 (GWP = 1,810); and R–502 (GWP = 4,660) (WMO, 2006). The GWPs for hydrocarbons (including the four being reviewed here) are minimal and are significantly lower than those of other acceptable refrigerants in these end-uses (*e.g.* GWPs of R–134a, R–404A, R–407C, and R–410A are about 1430, 3920, 1770, and 2090, respectively).

The greenhouse gas (GHG) impacts of these refrigerants also depend upon the energy use by appliances, since the "indirect" GHG emissions associated with electricity consumption typically exceed those from refrigerants over the full lifecycle of refrigerant-containing products. (Citation: J. Sand, S. Fischer, and V. Baxter, "Energy and Global Warming Impacts of HFC Refrigerants and Emerging Technologies," 1997, Oak Ridge National Lab) If hydrocarbon-using appliances are less energy efficient than the appliances they replace, then it is possible that these appliances will result in higher lifecycle greenhouse gas emissions even if refrigerant emissions are lower. Conversely, higher energy efficiency of these appliances would lead to lower GHG emissions than the reduction from

[6] CFCs and HCFCs are examples of ozone-depleting compounds unlike HCs which contain no chlorine. CFCs and HCFCs bring chlorine to the stratosphere, which cause depletion of the ozone layer.

refrigerants alone. We have not quantified the full lifecycle GHG emissions associated with substituting traditional ODS refrigerants with hydrocarbons but acknowledge that they also depend on the appliance's electricity consumption and the fuel used to generate that electricity.

Hydrocarbons are VOCs under CAA regulations addressing the development of State Implementation Plans to attain and maintain National Ambient Air Quality Standards for ground-level ozone, which is a respiratory irritant (*see* 40 CFR 51.100(s)). Potential emissions of VOCs from all substitutes for all end-uses in the refrigeration and air conditioning sector are estimated to be insignificant relative to VOCs from all other sources (*i.e.,* other industries, mobile sources, and biogenic sources) (ICF, May 22, 2009, May 26, 2009, and July 17, 2009).

B. Flammability and Fire Safety

Due to their flammable nature, isobutane, propane, HCR–188C, and HCR–188C1 could pose a significant safety concern for workers and consumers if they are not handled correctly. In the presence of an ignition source (*e.g.,* static electricity spark resulting from closing a door, using a torch during service, or a short circuit in wiring that controls the motor of a compressor), an explosion or a fire could occur when the concentration of isobutane, propane, HCR–188C or HCR–188C1 exceeds its lower flammability limit [7] (LFL) of 18,000 ppm, 21,000 ppm, 20,000 ppm, or 16,000 ppm, respectively. Therefore, in order for these substitutes to be used safely, it is important to minimize the presence of potential ignition sources and to reduce the likelihood that the levels of isobutane, propane, HCR–188C, or HCR–188C1 will exceed the LFL. In production facilities or other facilities where large quantities of the refrigerant would be stored, proper safety precautions should be in place to minimize the risk of explosion. EPA recommends these facilities be equipped with proper ventilation systems to minimize the risks of explosion and should be properly designed to reduce possible ignition sources. EPA also understands that these hydrocarbon refrigerants will be used by original equipment manufacturers (OEMs) in specifically redesigned refrigerators and freezers.

For all four hydrocarbon refrigerants considered in this proposal, to determine whether flammability would be a concern for service and manufacture personnel or for consumers, EPA conducted a reasonable worst-case scenario analysis to model catastrophic release of the refrigerant. The worst-case scenario analysis revealed that even if the unit's full charge is emitted within one minute, none of these four hydrocarbons reached the LFL (ICF, May 22, 2009, May 26, 2009, July 17, 2009, and November 6, 2009). However, as mentioned above, hydrocarbons refrigerants are flammable and service and manufacture personnel or consumers are not familiar with these refrigerator or freezer or combination refrigerators and freezers containing a flammable refrigerant; therefore, use conditions are necessary to create awareness of a flammable refrigerant and ensure safe handling. Detailed analysis of the modeling results are discussed below in the "toxicity" section of the preamble. EPA also reviewed the submitters' detailed assessments of the probability of events that might create a fire and engineering approaches to avoid sparking from the refrigeration equipment.

C. Toxicity

In evaluating potential human health impacts of isobutane, propane, HCR–188C, and HCR–188C1, EPA considered impacts both on exposed manufacture personnel, store employees, technicians herein defined as "worker," and on consumers. EPA investigated the risk of asphyxiation and of exposure to toxic levels of refrigerant for a worst-case scenario and a typical use scenario for isobutane, propane, HCR–188C, and HCR–188C1. EPA believes that the use of any of these hydrocarbons in the end-uses reviewed does not pose a significant risk of asphyxiation or of exposure to toxic levels to workers or consumers.

EPA estimated the maximum time weighted average [8] (TWA) exposure for each exposure scenario and compared this value to relevant industry and government exposure limits for isobutane, propane, HCR–188C, and HCR–188C1 (including potential impurities in the substitutes). The modeling results indicate that both the short-term (15-minute and 30-minute) and long-term (8-hour) worker exposure concentrations at no point are likely to exceed 2 percent (for isobutane), 50 percent (for propane), 4 percent (for HCR–188C), or 2 percent (for HCR–188C1) of the Occupational Safety and Health Administration (OSHA) permissible exposure limit (PEL) and National Institute for Occupational Safety and Health (NIOSH) recommended exposure limit (REL) of the component refrigerants (for isobutane and propane) or the refrigerants components for HCR–188C and HCR–188C1(ICF, 2009).

EPA performed a consumer exposure analysis that examined potential catastrophic release of the substitute under a reasonable worst-case scenario. Estimates for acute/short-term consumer exposures resulting from catastrophic leakage of refrigerant from residential refrigerators were examined. The analysis was undertaken to determine the 15-minute and 30-minute TWA exposure levels for the substitute, which were then compared to the standard toxicity limits to assess the risk to consumers. However, the TWA values were conservative, as the analysis did not consider opened windows, fans operating, conditioned airflow (either heated or cooled), and other variables that would likely reduce the levels to which individuals would be exposed.

This analysis assumed that 100 percent of the unit's charge would be released during a time span of one minute, at which time the concentration of refrigerant would peak and then steadily decline. Refrigerant concentrations were modeled under two air change scenarios, believed to represent the baseline of potential flow rates for a home, assuming flow rates of 2.5 and 4.5 air changes per hour (ACH) (Sheldon 1989). The highest concentrations of the refrigerant occur in the lower stratum of the room when assuming lower ventilation levels of 2.5 ACH. Using a 2.5 ACH to calculate the TWA achieves a higher concentration than using 4.5 ACH to calculate the TWA. Because EPA looked at the worst case scenario it was only necessary to evaluate the TWA values using 2.5 ACH as 4.5 ACH TWA values would be in the acceptable range if the 2.5ACH TWA values were within the acceptable range.

OSHA (2004) states no toxic effects are reported with exposures to isobutane below 18,000 ppm. Even under the very conservative assumptions used in the consumer exposure modeling, both the estimated 15-minute and 30-minute consumer exposures to isobutane (5,025 ppm and 3,844 ppm, respectively) are much lower than 18,000 ppm, and thus should not pose a toxicity threat.

EPA also evaluated the same scenario with HCR–188C and HCR–188C1. The highest concentrations of HCR–188C and HCR–188C1 occur in the lower

[7] Lower flammability limit (LFL) = Lower Flammability Limit, the minimum concentration in air at which flame propagation occurs.

[8] Time weighted average (TWA) = An allowable exposure concentration averaged over a normal 8-hour workday or a 40-hour workweek.

stratum of the room when assuming lower ventilation levels of 2.5 ACH. Even under the conservative assumptions used in the consumer exposure modeling, both the estimated 15-minute and 30-minute consumer exposure levels of HCR–188C and HCR–188C1 are at least 50 percent lower than the 30-minute acute exposure guideline level (AEGL)-1 values for the individual components of the blend and thus should not pose a toxicity threat.

To assess end-use exposures to propane, an Acute Exposure Guideline Level (AEGL) was chosen as the most appropriate toxicological limit. This limit is an emergency guideline for exposures to the general population (including susceptible populations) and is not time-weighted; it also considers the chemical's flammability in addition to its toxicity. A time-weighted limit was deemed inappropriate for this scenario because, due to the nature of a time-weighted calculation. As TWA are exposure concentrations averaged over a normal eight (8) hour work-day, it could allow a room occupant to be exposed to levels higher than the limit for a brief period of time. This is a concern for propane due to its flammability, as a higher exposure could approach the chemical's lower flammability limit (LFL—propane has an LFL of 21,000 ppm).

The EPA develops a set of AEGL values for a chemical for five exposure periods (10 and 30 minutes, 1 hour, 4 hours and 8 hours). For each exposure period, three different AEGL values are developed to address different levels of toxicological impacts. Of relevance for the modeled scenario is the AEGL–1 (10,000 ppm), which is defined as: "the airborne concentration, expressed as parts per million or milligrams per cubic meter (ppm or mg/m3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic nonsensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure." While permanent toxicological effects are not expected up to the AEGL–2 value (17,000 ppm for propane), this limit is not relevant for this analysis because at that level, flammability would be a greater concern.

EPA analyzed consumer and worker exposure to propane in commercial food cabinets with a 150 gram charge size. The highest expected levels of exposure for this end-use occur in the lower stratum of the room. The result for propane is a 15-minute TWA of 10,414 ppm and a 30-minute TWA of 7,963 ppm. The 10-minute (AEGL)–1 value for propane is 10,000 ppm.[9] Specifically, for propane at the end-use, the modeled 15-minute time-weighted average exposure is 10,414 ppm (for practical purposes, there is no difference toxicologically speaking between this value and 10,000 ppm (the AEGL–1 value), especially as this is a modeled concentration and is based on a worst-case scenario). As this exposure concentration is marginally higher than the AEGL–1 and significantly lower than the AEGL–2, serious or permanent toxicological effects are not expected for room occupants at the end-use. Therefore, it is believed that even under the very conservative assumptions used in this model, exposures to propane should not pose a toxicity threat. As the AEGL is an emergency guideline, and flammability is a concern for this chemical, it is recommended that room occupants should evacuate the space immediately following the accidental release of this refrigerant. As our submitters have stated an accidental release would be caused during service and maintenance therefore the service technicians would know to evacuate. For further information regarding accidental releases or fault tree analyses see the docket number EPA–HQ–OAR–2009–0286.

V. Why is EPA proposing these specific use conditions?

EPA is proposing to find isobutane, HCR–188C, and HCR–188C1 acceptable with use conditions in new household refrigerators and freezers and combination refrigerator and freezers (with a charge of 57 grams (2.0 ounces) or less) and propane acceptable with use conditions in stand-alone retail food refrigerators and freezers (with a charge of 150 grams (5.3 ounces) or less) that are designed and manufactured specifically to use these alternatives. The proposed listings with the specific use conditions are intended to allow for the use of isobutane, propane, HCR–188C, and HCR–188C1 where the current evidence shows that they can be used safely within specified parameters. We also seek comment on the proposed listing as well as the specific use conditions discussed below.

A. New Equipment Only; Not Intended for Use as a Retrofit Alternative

EPA is proposing that the four refrigerants considered in this proposal must be used only in new equipment that has been designed and manufactured specifically for use with the listed alternative refrigerant, as follows:

- Isobutane—household refrigerators, freezers, and combination refrigerator and freezers;
- Propane—retail food refrigeration (stand-alone only);
- HCR–188C—household refrigerators and freezers and combination refrigerator and freezers; and
- HCR–188C1—household refrigerators and freezers and combination refrigerator and freezers.

The four refrigerants were not submitted under the SNAP program to be used in retrofitted equipment. Existing equipment designed for other refrigerants may not be converted or retrofitted to use any of these four hydrocarbon refrigerants. These substitutes may be used only in new equipment that is designed to address concerns unique to flammable refrigerants.

B. Standards

EPA is proposing the refrigerants may be used only in equipment that meets all requirements in UL Standard 250 10th edition (for isobutane, HCR–188C, and HCR–188C1 in household refrigerators and freezers) or UL 471 9th edition (for propane in retail food equipment specifically in stand-alone refrigeration and freezers).[10] UL has tested equipment for flammability risk in both household and retail food refrigeration. Further, UL has developed acceptable safety standards including requirements for construction, for markings, and for performance tests concerning refrigerant leakage, ignition of switching components, surface temperature of parts, and component strength after being scratched.

C. Charge Size

EPA is proposing a limitation on charge size for refrigerators and freezers that reflects the UL 250 and UL 471 standards. EPA is proposing a charge size not to exceed 57grams (2.0 ounces) for household refrigerators and freezers and 150 grams (5.3 ounces) for retail food refrigeration in stand-alone units. To place this in comparison, EPA estimates the charge size of a disposable lighter is equal to 30 grams (1.1

[9] *http://www.epa.gov/opptintr/aegl/pubs/results96.htm* EPA Web site accessed August 17, 2009.

[10] EPA is referencing the UL Standard 250 Supplement SA; "Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System", UL 250 10th edition (for isobutane, HCR–188C, and HCR–188C1 in home refrigerators and freezers) and UL 471 9th edition Supplement SB; "Requirements for Refrigerators and Freezers Employing a Flammable Refrigerant in the Refrigerating System" (for propane in commercial refrigerators and freezers).

ounce).[11] Therefore we estimate that charge size of household refrigerators and freezers are equivalent to approximately two disposable lighters while retail stand-alone refrigerators and freezers are equivalent to approximately five disposable lighters or less. In comparison, the household refrigerator and freezer and retail food refrigerator charge size is significantly less than refillable butane lighter fluid which contains 340 grams (12 ounces). The refrigerant charge is smaller than the disposable propane fuel cylinders used for camping which contains 468 grams (16.4 ounces).

The UL 250 standard limits the amount of refrigerant that may leak to 50 grams (1.8 ounces). EPA selected 57 grams (2.0 ounces) to allow for up to 7 grams (0.2 ounces) of refrigerant charge that might be solubilized in the oil (and assumed not to not leak or immediately vaporize with the refrigerant in the case of a leak). UL standard 471 limits the amount leaked to 150 grams (5.3 ounces). Furthermore, the charge size limit for propane (for retail food refrigeration) is in line with the IEC 60335–2–89 standard for commercial appliances, which has a charge size limit of 150 grams (5.3 ounces). EPA did not include an additional 7grams (0.2 ounces) of refrigerant that would be solubilized in the oil as we did in the household refrigerator and freezers end use. This is because 157 grams (5.5 ounces) would be over the international charge size standard for retail food refrigeration. As the international household refrigerator and freezers standard's charge size limit is 150 grams (5.3 ounces) larger than UL 250 standard, EPA's suggested charge size for household refrigerator and freezers would be well below the international charge size limit. EPA is taking comment on the charge size limit on both the household refrigerator and freezers and retail food refrigeration end use.

D. Color-Coded Hoses and Piping

EPA proposes that equipment must have distinguishing color-coded hoses and piping to indicate use of a flammable refrigerant. This will help technicians immediately identify the use of a flammable refrigerant, thereby potentially reducing the risk of using sparking equipment or otherwise having an ignition source nearby. The air conditioning and refrigeration industry currently uses distinguishing colors as means for identifying different refrigerants. Likewise, distinguishing coloring has been used elsewhere to indicate an unusual and potentially dangerous situation, for example in the use of orange-insulated wires in hybrid electric vehicles. EPA is proposing that all such refrigerator tubing be colored red Pantone Matching System (PMS) #185 to match the red band displayed on the container of flammable refrigerants under the Air Conditioning, Heating and Refrigeration Institute (AHRI) Guideline "N" 2008, "2008 Guideline for Assignment of Refrigerant Container Colors." EPA believes that one color is sufficient for both household refrigerator and freezers and retail food refrigeration (stand-alone units) to indicate the equipment contains a flammable refrigerant.

EPA wants to ensure that there is no doubt that a flammable refrigerant is being used within the equipment or appliance. Currently, no industry standard exists for color-coded hoses or pipes for isobutane, propane, HCR–188C, or HCR–188C1. EPA is taking comment on the potential development of an industry-wide standard for hoses and pipes for flammable refrigerants.

One mechanism to distinguish hoses and pipes that EPA would find acceptable is to add a colored plastic sleeve or cap to the service tube. The colored plastic sleeve or cap would have to be forcibly removed in order to access the service tube. This would signal to the technician that the refrigeration circuit that she/he was about to access contained a flammable refrigerant, even if all warning labels were somehow removed. This sleeve could be boldly marked with a specific color or graphic to indicate the refrigerant was flammable. This could be a cost-effective means as an alternative to painting or dying the hose or pipe. EPA is taking comment on this mechanism of distinguishing the pipe and hose by adding a colored plastic sleeve or cap to the pipe or hose.

EPA is particularly concerned with ensuring adequate and proper notification for servicing and disposal of appliances containing flammable refrigerants. EPA believes the use of color-coded hoses, as well as the use of warning labels and unique fittings discussed below, would be reasonable and would be consistent with other general industry practices. EPA requests comment on whether such color coding would provide, in combination with other proposed use conditions, adequate warning of the use of a flammable refrigerant and, if so, whether such color-coding should be required for all tubing or just some, *e.g.,* around service ports.

E. Labeling

As a use condition, EPA is proposing to require labeling of household and retail refrigerators and freezers. EPA is proposing the warning labels on the equipment contain letters at least ¼ inch high. The label must be permanently affixed to the refrigerator until the refrigerator's end of life. Warning label language for household refrigerators and freezers is found in UL 250 as SA6.1 and for commercial refrigerators and freezers in UL 471 as SB6.1.

EPA believes that it would be difficult to see the warning labels with UL 250 and 471's minimum lettering height requirement of ⅛ inch. Therefore, EPA is proposing the minimum height must be ¼ inch as opposed to ⅛ inch for lettering, which will make it easier for technicians, consumers, retail storeowners, and emergency first responders to view the warning labels. EPA is requesting comment on requiring labeling, the height of the lettering, whether specific colors or symbols are also needed, and the likelihood of labels remaining on a product throughout the lifecycle of the product, including its disposal.

F. Unique Fittings

EPA is proposing that household and retail refrigerators and freezers using these refrigerants must have fittings unique to flammable refrigerants (with unique color and unique thread direction or fitting diameter to the refrigerant). Instead of having separate fittings for each type of flammable refrigerant, EPA believes one unique fitting for all flammable refrigerants is sufficient. We believe that using flammable refrigerants with a unique set of fittings will prevent the accidental mixing of flammable and non-flammable refrigerants. These fittings (male or female, as appropriate) are attachment points on the equipment itself, on all recovery equipment, on charging equipment, and on all refrigerant containers. Unique fittings are defined in 64 FR 22983, April 28, 1999 as: "For screw-on-fittings, "differ" means that either the diameter must differ by at least 1/16 inch or the thread direction must be reversed (*i.e.,* right handed vs. left handed). Simply changing the thread pitch is not sufficient. For quick-connect fittings, "differ" means that a person using normal force and normal tools (including wrenches) must not be able to cross-connect fittings."

EPA believes that service ports are necessary to facilitate recovery of refrigerant during service or disposal of

[11] Study conducted by Ben and Jerry's/Unilever on the weight of butane contained in disposable lighters.

appliances. EPA notes that service apertures on small appliances using class I and class II substances is required by the CAA section 608(b)(2). Service ports allow for the proper recovery of refrigerant during service or disposal of refrigerators and freezers because service ports act as an access point for recovery equipment. As required by 40 CFR 82.154(a)(1), no refrigerant may be knowingly vented. Therefore, prior to disposal of the equipment all refrigerants must be recovered. Without the service port on the equipment, there is no mechanism to recover the refrigerant without cutting into the refrigerant lines.

In addition, EPA is requiring that flammable refrigerant fittings must be designed to mechanically prevent cross-charging with another non-flammable refrigerant. EPA believes that it is likely that technicians servicing hydrocarbon appliances will also service appliances containing CFC, HCFC, and HFC refrigerants. The multitude of refrigerants could lead to unintentional mixing of recovered refrigerant resulting in emissions of contaminated refrigerant that might not be able to be economically separated and/or reclaimed. EPA believes that unique fittings will aid in the prevention of such contamination that might prevent recycling and reclamation of otherwise useful non-flammable refrigerant. This is especially important as the HCFC allocation rule becomes effective on January 1, 2010, it is expected the supply of HCFC–22 will become limited during the middle of the coming decade. Recycling and reclamation of HCFC–22 will be necessary to maintain an ample supply of HCFC–22.

Traditionally the refrigeration industry has not used unique fittings; however, it has been required in the motor vehicle air conditioning industry since June 13, 1995 (60 FR 31096). For further clarification please refer to April 28, 1999 (64 FR 22983) where EPA defined uniqueness of fittings for motor vehicle air conditioners using substitutes under SNAP. EPA believes that the use of unique fittings in stationary refrigeration and air conditioning are appropriate for flammable refrigerants. Unique fittings would help maintain the separation of flammable refrigerants from equipment designed for non-flammable refrigerants because the equipment for charging flammable refrigerants would not be able to be used on other equipment. This should reduce the risk of fire by ensuring that flammable refrigerants are used only in equipment designed for flammable refrigerants. In addition, the use of unique fittings can help in identifying the refrigerant being used and reducing the likelihood that flammable refrigerant might contaminate supplies of recovered nonflammable refrigerant containing CFCs, HCFCs, or HFCs.

EPA requests comments on the potential use of unique fittings, whether one such unique fitting is adequate to cover all flammable refrigerants, the adequacy of the definition of unique fittings, and the likelihood that such fitting would achieve the objectives of avoiding refrigerant contamination and maintaining safety in a market where both flammable and non-flammable refrigerants may be utilized. EPA is also requesting comment on the applicability of the ANSI/ASHRAE 34–2007 standard for flammability and whether these use conditions are appropriate to ensure safety.

G. Small Containers

EPA is proposing that these four refrigerants may not be sold for use in the listed end uses as a refrigerant in containers in quantities of less than five pounds (2.8 kg). This restriction would ban the sale of small canisters of refrigerant-grade hydrocarbons. The purpose of this proposal is to prevent purchase by untrained people who would not have the appropriate skills or equipment to properly recover or charge the refrigerant. Larger containers of flammable refrigerant would also typically be purchased by technicians rather than untrained people because the larger amount of refrigerant would be less useful to individual users, who would typically need only a small amount, and the larger quantity could be cost prohibitive to individual users. Therefore this would reduce the possibility that untrained people would handle the flammable refrigerant, accidentally add flammable refrigerants to a CFC, HCFC, or HFC refrigerant, or would incorrectly dispose of the containers.

Contaminating a CFC, HCFC, or HFC refrigerant will cause the refrigerant to be potentially unusable. Mixing of refrigerants is counter to overall Title VI implementation. Consequently, the wasted refrigerant would have to be disposed of properly rather than reused, potentially further limiting the tight supply of HCFC–22 in the coming decade. The SNAP program, together with other Title VI regulations, seeks to ensure a smooth transition as we continue to phase out ODS, including HCFC–22. In addition to contaminating the refrigerant, an untrained person could potentially add a flammable refrigerant to equipment that is not designed for flammable refrigerant and, as a result, damage the equipment or appliance or create a fire hazard. To prevent refrigerant contamination, addition of the incorrect refrigerant, or incorrect disposal of canisters and to avoid the risk of explosions or fire, EPA proposes a use condition prohibiting small containers of isobutane, propane, HCR–188C, and HCR–188C1, *i.e.,* containers of less than five lbs (2.8 kg). EPA is seeking comment on this restriction on small canisters of refrigerant grade hydrocarbons such as R–600a, R–290, HCR–188C, and HCR–188C1. EPA is also requesting comment on the potential cost of the containers of hydrocarbon refrigerant and if the cost of such containers of hydrocarbon refrigerants would be different from the current cost of a similar quantity of propane or isobutane currently sold for other purposes.

VI. What recommendations does EPA have for safe use of hydrocarbon refrigerants?

EPA proposes to recommend that only technicians specifically trained in handling flammable refrigerants service or dispose of refrigerators and freezers containing these refrigerants. Technicians must know how to minimize the risk of fire and the procedures for using flammable refrigerants safely. Releases of large quantities of refrigerant during servicing and manufacturing, especially in areas where large amounts of refrigerant are stored, could cause an explosion if an ignition source exists nearby. For these reasons, it is important that only properly trained technicians handle flammable refrigerants when servicing or disposing of household and retail food refrigerators and freezers.

EPA is unaware of any existing industry-wide technician training program or standard that fully covers the safe use of flammable refrigerants. EPA has reviewed several training programs provided as part of SNAP submissions from persons interested in flammable refrigerants. EPA intends to update the CAA section 608 technician certification test bank provided to organizations that administer the certification exams in accordance with 40 CFR 82.161 to specifically address flammable refrigerants. EPA requests any information on an industry-wide flammable refrigerant training program, whether such a program is under development, the burden on the technicians to take an industry wide safety training, and the timeline likely needed to develop such a program in order to begin training a nation-wide fleet of technicians.

VII. What other options did EPA consider?

EPA considered several different options in preparing this proposed rule. Although EPA is not proposing these options, which are discussed below, we seek comment on them.

EPA considered allowing isobutane and propane as a refrigerant for use only in the original equipment manufacturers' (OEM) specific appliances, described in a SNAP application. The reason for such a limitation is the concern that equipment from other manufacturers would not be designed with spark-proof engineering as prescribed by the submitter, nor would the manufacturers be able to develop recovery equipment compatible with flammable refrigerants.

Limiting use to SNAP reviewed equipment would be time consuming and costly for all parties involved. EPA would have to consider each refrigerator and freezer model for both household and retail separately. This would increase the burden on industry, with little added benefit for health and safety, since the engineering of such equipment and the requirements needed to meet a national safety standard are already rigorous. Although there is the potential that some OEMs might not develop proper equipment, EPA believes that the potential liability associated with selling equipment not designed to safely use these refrigerants should ensure that this does not occur. Therefore, EPA decided to not propose to limit use to equipment reviewed by EPA through the SNAP program.

EPA also considered a specific use condition requiring "spark proof" circuits in the design of equipment using hydrocarbon refrigerants. EPA believes it would be unnecessary to further require "spark proof circuits" as a use condition because UL 250 and UL 471 already require strict standards, to prevent fire or explosion, which must be met in order to obtain certification. We believe that all OEMs will also take into account flammability risks when designing the appliance to meet the charge size requirement.

EPA also considered proposing as a use condition that recovery equipment used to recapture these refrigerants must be able to handle flammable refrigerants. In accordance with CAA Section 608 regulations, refrigerant cannot be vented to the atmosphere and instead must be recaptured and recycled, reclaimed if possible, or disposed of in accordance with Federal and state regulations. For safety concerns, recovery equipment appropriate for flammable refrigerants will be needed. EPA seeks data on whether there currently is an industry standard for recovery units for flammable refrigerants and whether there are available specific recovery units that are compatible with isobutane, propane, HCR–188C, and HCR–188C1. At this time, EPA is unaware of any recovery units that are designed specifically for hydrocarbons and which are readily available in the U.S. EPA did not propose that recovery equipment used to recapture hydrocarbon refrigerants because this is better addressed under Section 608.

Under Section 608 of the CAA, venting of hydrocarbons for household refrigerators and freezers and retail food refrigeration (stand-alone refrigerators and freezers) could be allowed if EPA determines that such venting, releasing, or disposing of such substance does not pose a threat to the environment. EPA is not proposing such a determination in this rule making, but requests comment on whether hydrocarbon refrigerants should be exempted from the Section 608 venting prohibition. As appropriate, EPA would address these issues in a separate

EPA also considered other approaches such as:

- Requiring only one use condition for each refrigerant; to meet the UL 250 or 471 standards;
- Finding hydrocarbon refrigerants unacceptable until an industry-wide standard exists for servicing refrigerator using hydrocarbon refrigerant.

EPA is taking comment on the above alternate approaches.

VIII. 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." It raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. 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.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This proposed rule is an Agency determination. It contains no new requirements for reporting. The only new recordkeeping requirement involves customary business practice. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations in subpart G of 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0226. This Information Collection Request (ICR) included five types of respondent reporting and recordkeeping activities pursuant to SNAP regulations: Submission of a SNAP petition, filing a SNAP/TSCA Addendum, notification for test marketing activity, recordkeeping for substitutes acceptable subject to use restrictions, and recordkeeping for small volume uses. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.C.

C. Regulatory Flexibility Act (RFA)

The 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 a 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 rule 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 which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The requirements of this proposed rule impact household and commercial refrigerator and freezer manufacturers. This rule indirectly affects users, technician testing organizations, and technicians. Today's action, if finalized, would allow users the additional options of using isobutane, propane, HCR–188C, and HCR–188C1. Because isobutane, propane, HCR–188C and HCR–188C1 refrigeration systems are not manufactured yet, no change in business practice would be required to meet the use conditions and thus the

rule would not impose any new costs on small entities if finalized as proposed. EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any State, local, or tribal governments or the private sector.

The enforceable requirements of this proposed rule related to integrating risk mitigation devices, markings, and procedures for maintaining safety of household refrigerators, freezers, and combination refrigerator and freezer systems using hydrocarbon refrigerants affect only a small number of manufacturers of household and commercial refrigerators, freezers, and combination refrigerator and freezers and their technicians. This proposal provides additional refrigerant options, allowing greater flexibility for industry in designing consumer products. Further, equipment using hydrocarbon refrigerants is not yet being produced in the U.S. therefore we do not expect impacts on existing users. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This regulation applies directly to facilities that use these substances and not to governmental entities. The acceptability with use conditions of isobutane, propane, HCR–188C, and HCR–188C1 does not impact the private sector because manufacturers are not producing systems under the current regulation. This proposed rule does not mandate a switch to these substitutes; consequently, there is no direct economic impact on entities from this rulemaking.

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. This regulation applies directly to facilities that use these substances and not to governmental entities. Thus, Executive Order 13132 does not apply to this action. 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 comments on this proposed action from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). 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, as specified in Executive Order 13175. EPA specifically solicits additional comment on this proposed action from tribal officials.

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

This action is not subject to Executive Order 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. This proposed rule provides both regulatory restrictions and recommended guidelines based upon risk screens conducted in order to reduce risk of fire and explosion. The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to the refrigerants addressed in this action.

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

This action is not a "significant energy action" as defined in Executive Order 13211, (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. Preliminary information indicates that these new systems may be more energy efficient than currently available systems in some climates. Further, we have concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, (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 rule involves technical standards. EPA proposes to use the Underwriters Laboratory (UL) standards 250 and 471, which was revised to include requirements for safety and reliability for flammable refrigerants. This proposed rule regulates the safety and deployment of new substitutes for household and commercial refrigerators and freezers.

EPA welcomes comment on this aspect of the proposed rulemaking and, specifically invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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 will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any

minority or low-income population. This proposed rule would provide refrigerant substitutes that have no ODP and low GWP. The reduction in ODS and GWP emissions would assist in restoring the stratospheric ozone layer and provide climate benefits.

IX. References

The documents below are referenced in the preamble. All documents are located in the Air Docket at the address listed in Section I.B.1 at the beginning of this document. Unless specified otherwise, all documents are available electronically through the Federal Docket Management System, Docket #EPA–HQ–OAR–2009–0286. Numbers listed after the reference indicates the docket and item numbers.

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List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: April 29, 2010.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart G—Significant New Alternatives Policy Program

2. Subpart G is amended by adding Appendix R to read as follows:

Appendix R to Subpart G—Substitutes Subject To Use Restrictions and Unacceptable Substitutes

Listed in the [publication date of final rule] final rule. Effective (date of effective date of the final rule).

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS

End use	Substitute	Decision	Use conditions	Further information
Household refrigerators and freezers and combination refrigerators and freezers.	Isobutane, R–600a, as a substitute for CFC–12 and HCFC–22.	Acceptable With Use Conditions.	1. The quantity of the substitute refrigerant (*i.e.,* "charge size") shall not exceed 57 grams (2.0 ounces) in any refrigerator, freezer, or combination refrigerator and freezers;	Technicians and equipment manufactures should wear appropriate personal protective equipment, including chemical goggles and protective gloves when handling isobutane, HCR–188C, and HCR–188C1. Special care should be taken to avoid contact with the skin since isobutane, HCR–188C, and HCR–188C1 like many refrigerants, can cause freeze burns on the skin.
New Only	HCR–188C as a substitute for CFC–12 and HCFC–22.		2. These refrigerants may be used only in new equipment designed specifically and clearly identified for the refrigerant (*i.e.,* none of these substitutes may be used as a conversion or "retrofit" refrigerant for existing equipment);	• A class B dry powder type fire extinguisher should be kept nearby.

[12] OSHA regulation 29 CFR 1910.110 considers ventilation adequate "when the concentration of the gas in a gas-air mixture does not exceed 25 percent of the lower flammable limit."

[13] OSHA regulation 29 CFR 1910.110 considers ventilation adequate "when the concentration of the gas in a gas-air mixture does not exceed 25 percent of the lower flammable limit."

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End use	Substitute	Decision	Use conditions	Further information
	HCR–188C1 as a substitute for CFC–12 and HCFC–22.		3. These refrigerants may be used only in refrigerators or freezers or combination refrigerator and freezers that meet all requirements listed in the 10th edition of Underwriters Laboratory (UL) Standard 250. In cases where the final rule includes requirements more stringent than those of the 10th edition of UL Standard 250, the appliance must meet the requirements of the final rule in place of the requirements in the UL Standard; 4. The refrigerator, freezer, or combination refrigerator and freezer must have red, Pantone Matching System (PMS) #185 marked pipes, hoses, or other devices through which the refrigerant passes to indicate the use of a flammable refrigerant. This color must be applied at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected and must extend a minimum of one (1) inch in both directions from such locations;	• Proper ventilation should be maintained at all times during the manufacture of equipment containing hydrocarbon refrigerant through adherence to good manufacturing practices as per 29 CFR 1910.110.[12] If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit,[1] the space should be evacuated and re-entry should only occur after the space has been properly ventilated. • Technicians should only use spark proof tools when working refrigerators and freezers with R–600a, HCR–188C, and HCR–188C1. • Recovery equipment designed for flammable refrigerants should be used. • Only technicians specifically trained in handling flammable refrigerants should service refrigerators and freezers containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. • In production facilities or other facilities where large quantities of the refrigerant would be stored, proper safety precautions should be in place to minimize the risk of explosion. These facilities should be equipped with proper ventilation systems to minimize the risks of explosion and should be properly designed and operated to reduce possible ignition sources.
Household refrigerators and freezers and combination refrigerators and freezers.	Isobutane, R–600a, as a substitute for CFC–12 and HCFC–22.	Acceptable With Use Conditions.	5. Similar to clauses SA6.1.1 to SA6.1.2 of UL standard 250, the following markings, or the equivalent, shall be provided and shall be permanent:	• Room occupants should evacuate the space immediately following the accidental release of this refrigerant.
New Only	HCR–188C as a substitute for CFC–12 and HCFC–22. HCR–188C1 as a substitute for CFC–12 and HCFC–22.	.....	(a) "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing." (b) "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing." (c) "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (e) "CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." The marking described in clause (a) above shall be provided on or near any evaporators that can be contacted by the consumer. The markings described in clauses (b) and (c) above shall be permanently attached near the machine compartment. The markings described in clause (d) above shall be permanently attached on the exterior of the refrigerator. The marking described in clause (e) above shall be permanently attached near any and all exposed refrigerant tubing. All of these markings shall be in letters no less than 6.4 mm (¼ inch) high.	

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End use	Substitute	Decision	Use conditions	Further information
Household refrigerators and freezers and combination refrigerators and freezers.	Isobutane, R–600a, as a substitute for CFC–12 and HCFC–22.	Acceptable With Use Conditions.	6. Household refrigerators, freezers, and combination refrigerator and freezers using these refrigerants must have service aperture fittings that are colored red as described above in use condition number four and which differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter must differ by at least 1/16 inch or the thread direction must be reversed (*i.e.,* right handed vs. left handed). The unique fittings must be permanently affixed to the unit and may not be accessed with an adaptor until the end-of-life of the unit;	
New Only	HCR–188C as a substitute for CFC–12 and HCFC–22.			
	HCR–188C1 as a substitute for CFC–12 and HCFC–22.		7. These refrigerants may not be sold for use as a refrigerant in containers designed to contain less than five pounds (2.8 kg) of refrigerant.	
Retail Food Refrigeration (stand-alone only).	Propane, R–290, as a substitute for CFC–12 and HCFC–22.	Acceptable subject to use conditions.	1. The charge size for the retail food refrigerator or freezer using R–290 shall not exceed 150 grams (5.3 ounces);	Technicians and equipment manufactures should wear appropriate personal protective equipment, including chemical goggles and protective gloves when handling isobutane. Special care should be taken to avoid contact with the skin since propane, like many refrigerants, can cause freeze burns on the skin.
New Only			2. This refrigerant may be used only in new equipment specifically designed and clearly identified for the refrigerant;	• A class B dry powder type fire extinguisher should be kept nearby.
			3. This substitute may only be used in equipment that meets all requirements in the 9th edition of UL Standard 471. In cases where the final rule includes requirements more stringent than those of the 9th edition of UL Standard 471, the appliance must meet the requirements of the final rule in place of the requirements in the UL Standard;	• Proper ventilation should be maintained at all times during the manufacture of equipment containing hydrocarbon refrigerant through adherence to good manufacturing practices as per 29 CFR 1910.110.[13] If refrigerant levels in the air surrounding the equipment rise above one-fourth of the lower flammability limit,[2] the space should be evacuated and re-entry should only occur after the space has been properly ventilated.
			4. The refrigerator or freezer must have red, Pantone Matching System (PMS) #185 marked pipes, hoses, and other devices through which the refrigerant passes to indicate the use of a flammable refrigerant. This color must be applied at all service ports and where service puncturing or otherwise creating an opening from the refrigerant circuit to the atmosphere might be expected, and must extend a minimum of one (1) inch in both directions from such locations;	• Technicians should only use spark proof tools when working refrigerators and freezers with R–290. • Recovery equipment designed for flammable refrigerants should be used. • Only technicians specifically trained in handling flammable refrigerants should service refrigerators and freezers containing these refrigerants. Technicians should gain an understanding of minimizing the risk of fire and the steps to use flammable refrigerants safely. • In production facilities or other facilities where large quantities of the refrigerant would be stored, proper safety precautions should be in place to minimize the risk of explosion. These facilities should be equipped with proper ventilation systems to minimize the risks of explosion and should be properly designed and operated to reduce possible ignition sources.
Retail Food Refrigeration (stand-alone only).	Propane, R–290, as a substitute for CFC–12 and HCFC–22.	Acceptable subject to use conditions.	5. Similar to clauses SB6.1.2 to SB6.1.5 of UL Standard 471, the following markings, or the equivalent, shall be provided and shall be permanent:	• Room occupants should evacuate the space immediately following the accidental release of this refrigerant.
New Only			(a) "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. Do Not Use Mechanical Devices To Defrost Refrigerator. Do Not Puncture Refrigerant Tubing." (b) "DANGER—Risk of Fire or Explosion. Flammable Refrigerant Used. To Be Repaired Only By Trained Service Personnel. Do Not Puncture Refrigerant Tubing."	

SUBSTITUTES THAT ARE ACCEPTABLE SUBJECT TO USE CONDITIONS—Continued

End use	Substitute	Decision	Use conditions	Further information
			(c) "CAUTION—Risk of Fire or Explosion. Flammable Refrigerant Used. Consult Repair Manual/Owner's Guide Before Attempting To Service This Product. All Safety Precautions Must be Followed." (d) "CAUTION—Risk of Fire or Explosion. Dispose of Properly In Accordance With Federal Or Local Regulations. Flammable Refrigerant Used." (e) "CAUTION—Risk of Fire or Explosion Due To Puncture Of Refrigerant Tubing; Follow Handling Instructions Carefully. Flammable Refrigerant Used." This marking shall be provided near all exposed refrigerant tubing. The marking described in clause (a) above shall be permanently attached on or near any evaporators that can be contacted by the consumer. The markings described in clauses (b) and (c) above shall be located near the machine compartment. The marking described in clause (d) above shall be permanently attached on the exterior of the refrigerator. The marking described in clause (e) above shall be permanently attached near any and all exposed refrigerant tubing. All of these markings shall be in letters no less than 6.4 mm (¼ inch) high.	
Retail Food Refrigeration (stand-alone only) New Only.	Propane, R–290, as a substitute for CFC–12 and HCFC–22.	Acceptable subject to use conditions.	7. Retail food refrigeration using R–290 must have fittings colored red as described above in use condition number four and which differ from fittings used in equipment or containers using non-flammable refrigerant. "Differ" means that either the diameter must differ by at least 1/16 inch or the thread direction must be reversed (*i.e.,* right handed vs. left handed). The unique fittings must be permanently affixed to the unit, and may not be accessed with an adaptor, until the end-of-life of the unit; 8. R–290 may not be sold as a refrigerant in containers containing less than five pounds (2.8 kg) of refrigerant.	

Note: In accordance with the limitations provided in Section 310(a) of the Clean Air Act (42 U.S.C. 7610(a)), nothing in this table shall affect the Occupational Safety and Health Administrations' authority to promulgate and enforce standards and other requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*)

[FR Doc. 2010–10959 Filed 5–7–10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 26

[Docket No. OST–2010–0118]

RIN 2105–AD75

Disadvantaged Business Enterprise: Program Improvements

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice of proposed rulemaking (NPRM) would propose to improve the administration of the Disadvantaged Business Enterprise (DBE) program by increasing accountability for recipients with respect to good faith efforts to meet overall goals, modifying and updating certification requirements, adjusting the personal net worth (PNW) threshold for inflation, providing for expedited interstate certification, adding provisions to foster small business participation and improve post-award oversight, and addressing other issues.

DATES: Comments on this proposed rule must be received by July 9, 2010.

ADDRESSES: You may submit comments (identified by the agency name and DOT Docket ID Number OST–2010–0118) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251

Instructions: You must include the agency name (Office of the Secretary, DOT) and Docket number (OST–2010–0118) for this notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail or courier. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR

19477) or you may visit *http://DocketsInfo.dot.gov.*

Docket: For internet access to the docket to read background documents and comments received, go to *http://www.regulations.gov.* Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Ave, SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC, 20590, Room W94–302, 202–366–9310, *bob.ashby@dot.gov.*

SUPPLEMENTARY INFORMATION: The Department of Transportation issued an advance notice of proposed rulemaking (ANPRM) on April 8, 2009, concerning several DBE program issues (74 FR 15904). The first concerned counting of items obtained by a DBE subcontractor from its prime contractor. The second concerned ways of encouraging the "unbundling" of contracts to facilitate participation by small businesses, including DBEs. The third was a request for comments on potential improvements to the DBE application form and personal net worth (PNW), and the fourth asked for suggestions related to program oversight. The fifth concerned potential regulatory action to facilitate certification for firms seeking to work as DBEs in more than one state. The sixth concerned additional limitations on the discretion of prime contractors to terminate DBEs for convenience, once the prime contractor had committed to using the DBE as part of its showing of good faith efforts. The Department received approximately 30 comment letters concerning these issues. This NPRM makes regulatory proposals concerning many of these issues.

In addition, since the ANPRM was published, both the House of Representatives and the Senate have passed their versions of a Federal Aviation Administration (FAA) reauthorization bill. These bills include a provision requiring an inflationary adjustment to the current $750,000 personal net worth (PNW) cap. Because the timing of the enactment of an FAA reauthorization bill is not yet clear, and the provisions of the bill do not apply to the Department's highway and transit programs in any case, the Department has decided to propose an inflationary adjustment of the PNW cap to $1.3 million, the figure that would result from the House and Senate bills.

Finally, the Department is proposing amendments to the certification-related provisions of the DBE regulation. These proposals result from the Department's experience in dealing with certification issues and certification appeal cases during the years since the last major revision of the DBE rule in 1999. The amendments are intended to clarify issues that have arisen and avoid problems with which recipients (i.e., state highway agencies, transit authorities, and airport sponsors who receive DOT grant financial assistance) and the Department have had to grapple over the last 11 years.

Accountability for Recipients With Respect to Overall Goals

Section 26.47 of the rule states that a recipient cannot be penalized for failing to meet overall goals. To penalize a recipient simply for failing to "hit a number" could create an impermissible quota system. Nonetheless, recipients are required to implement their DBE programs in good faith in order to remain in compliance with Part 26.

The Department takes this "good faith implementation" requirement very seriously. Accountability is the key to ensuring effective program implementation, and the Department believes that it is useful to add a new provision to increase the accountability of recipients with respect to overall goals and their attainment.

An overall goal is the recipient's estimate of the "level playing field" amount of DBE participation that it would expect to achieve in the absence of discrimination or its effects. Failing to meet the overall goal means that the measures the recipient has employed in carrying out its DBE program have not fully created that level playing field, and that discrimination or its effects have not fully been remedied. In order to implement its program in good faith, a recipient should make strong efforts to understand the reasons why it has not met its overall goal and to figure out what it can do to correct the situation.

For this reason, the Department is proposing to add a new paragraph (c) to § 26.47. If at the end of a fiscal year (FY) 1, (*e.g.,* September 30), a recipient has failed to meet its overall goal for that FY, the recipient must do two things: (1) Thoroughly analyze why it fell short of meeting its overall goal for FY1 and (2) establish specific steps and milestones for correcting identified problems so that the recipient will meet its overall goal in FY2 and subsequent years. State highway agencies, the largest 50 transit authorities as designated by FTA, and Operational Evaluation Airports and other airports designated by FAA would have to submit this material to FHWA, FTA, or FAA, as applicable. The NPRM proposes a period of 60 days to submit this material. The Department seeks comment on this process. Other FTA and FAA recipients would retain the information, so that DOT officials conducting program or compliance reviews could review it.

This section also proposes that, if a recipient fails to take actions required under the new provisions, the recipient could be regarded as in noncompliance with § 26.47 and hence subject to the remedies stated in § § 26.101 through 26.105 or other applicable regulations. These remedies include suspension or termination of Federal assistance, refusal to approve projects, payments, grants, or contracts, or other action at the discretion of the operating administration involved.

Goal Submission

On February 2010, the Department amended § 26.45 to allow recipients to submit overall goals every three years, rather than annually (75 FR 5535). This change was intended to reduce administrative burdens for recipients, as well as to permit DOT staff to give greater scrutiny to recipients' submissions. In this NPRM, we propose a clarification of this amendment. While the recipient need only submit a new goal every three years, it is still responsible for good faith implementation of that goal in each year.

In carrying out the accountability provision discussed above, the Department would hold recipients responsible for each year's implementation activity. For example, suppose that a recipient has a 12 percent goal for FY 1–3. If the recipient fell short of 12 percent in FY 1, the § 26.47 requirements for analysis of the shortfall and steps to remedy the problems in FY 2 would apply. The recipient would not be able to say, in effect, "We don't need to worry about our FY 1 shortfall because we'll catch up in FY 3."

It is possible, however, that a recipient might anticipate a funding stream for projects that would in fact differ from one year to the next. For example, an airport with a 12 percent goal might expect, given the projects, FAA assistance, and DBE availability that it anticipates, that it would have 6 percent DBE participation in FY 1, 18 percent in FY 2, and 12 percent in FY 3. The Department seeks comment on whether a recipient could, if it wished,

provide a year-to-year projection of its likely DBE participation within the framework of a goal and methodology submitted only every three years, with the result that in applying the accountability provision of proposed § 26.47, those year-to-year projections, rather than the three-year overall goal number, would be the benchmark for determining whether the analysis/corrective action requirements would be triggered. This could increase flexibility, but could undercut, to an extent, the purpose of the three-year goal submission interval. We anticipate that this approach would be relevant primarily, or perhaps only, in FAA programs, where Federal funding is more likely to change from year to year than in the FHWA and FTA programs.

Improving Oversight

The ANPRM asked for suggestions on how to improve program oversight. The Department received 17 comments. Several recipients commented to the effect that additional resources, including Federal assistance, would be necessary if they were to conduct additional oversight. Other commenters suggested that additional training and information in areas like contract compliance and close-out enforcement could be useful. A DBE organization noted that training for recipient executive-level officials, as well as operating-level staff, would be helpful. This commenter also wanted to emphasize the need for a direct DBE Liaison Officer connection to the top official of the organization. Other comments simply supported the concept of better oversight, without specifying how this could best be accomplished.

Program oversight is not a new concept in the DBE program. Existing § 26.37 requires monitoring and enforcement mechanisms. To strengthen these existing provisions, the Department is proposing to add a sentence to § 26.37(b), calling on recipients to make a written certification that they have reviewed contracting records and monitored the work on-site to ensure that DBEs have actually performed the work in question on each contract involving DBE participation counted toward contract or overall goals. To comply with this requirement, the recipient would have to make one such certification for every contract on any contract with DBE participation. This sentence would simply make more explicit a requirement that the Department believes is implicit in the existing regulatory language.

Existing § 26.25 already requires that the DBE liaison officer (DBELO) must have direct, independent access to the Chief Executive Officer (CEO) of the recipient's organization concerning DBE program matters. This means that the DEBLO must not be required to get anyone's consent or sign-off, or "go through channels," to talk and write personally to the CEO about DBE program matters. The Department does not believe that additional regulatory language is needed on this point: the existing provision is already explicit.

We also call attention to the last section of § 26.25, which requires that the recipient have adequate staff to administer the DBE program. In times of budget stringency, it may be tempting to cut back on staff and other resources needed for certification, program oversight, and other key DBE program functions. This sentence emphasizes that it is a requirement of Federal law that the DBE program be adequately staffed to ensure compliance with Part 26.

Personal Net Worth

The personal net worth (PNW) criterion has been a perennially controversial subject in the DBE rule. It is intended to ensure that only economically disadvantaged individuals participate in the DBE program, lest the program become overinclusive. The $750,000 PNW "cap," taken from SBA materials dating to 1989 or earlier, has been criticized by DBEs as penalizing success and imposing a glass ceiling on the growth and competitiveness of DBE firms. At the same time, the PNW cap has been a part of the package of narrow tailoring features that has helped the Department to defend the DBE program successfully against court challenges.

As noted above, the House and Senate versions of the currently pending FAA reauthorization bills both call for an inflationary adjustment in the PNW cap, relating back to 1989. Based on these provisions, the Department did a straight-line inflationary adjustment using the Consumer Price Index (CPI), which suggests a 73 percent inflation since 1989. This results in an adjusted PNW cap of $1.31 million. It is very important to understand that this does not represent an increase in the actual personal net worth which DBE owners may have, viewed in real dollar terms. Rather, $1.31 million today has the same value, in real dollar terms, as $750,000 in 1989. The inflationary adjustment simply maintains the economic status quo.

The Department is aware that there are a number of methodologies and approaches to making inflationary adjustments. The Department seeks comment on whether the straight-line CPI approach used in the NPRM is appropriate, or whether there are other approaches or techniques that would be better or more accurate. Also, it would not make sense for the Department to have one PNW number for FAA programs and another for FTA and FHWA programs. Therefore, the Department's proposal would apply the $1.31 million PNW cap to all programs covered by Part 26.

The pending FAA bills address another issue related to PNW, concerning the handling of retirement savings. Under the Department's current regulation, assets in retirement savings plans are regarded as part of an individual's wealth, and hence are counted as assets for PNW purposes. Some DBEs have long objected to this approach, saying that it is inappropriate to count these assets, which are not liquid and therefore not readily available for purposes of an owner's business. While giving the Department a degree of regulatory discretion, the pending FAA reauthorization bills direct the Department not to count such assets toward the PNW cap.

If these provisions are enacted, the Department will need to devise implementing rules. We seek comment on how best to do so. What sort of retirement savings should be covered by a new provision (*e.g.,* 401(k)s, IRAs, Roth IRAs, Keough Plans, stocks and bonds, certificates of deposit or savings plans, life insurance, etc.)? Should there be any limitation on the amount of money that could be eliminated from counting toward the PNW cap by being in a retirement savings product? Is there a potential problem of abuse, in which DBE owners could shelter assets from PNW consideration in inappropriate ways? If so, how would the Department attempt to deal with such a problem? Would the eliminating consideration of these assets have unintended distributive consequences across the breadth of the DBE program (*e.g.,* helping more affluent firms at the expense of smaller DBEs without such assets, having a racially disparate impact)? We seek comment on how we should shape the details of a future rule implementing the pending statutory provisions.

Interstate Certification and Related Issues

Under the current DBE rule, certification occurs on a statewide basis. The Unified Certification Program (UCP) in each state ensures "one-stop shopping" for DBE applicants within that state. The UCP requirement, which came into effect in 1999, has simplified certification by making it unnecessary

for recipients to apply multiple times for certification by various transit authorities, airports, and highway departments within a given state.

The present structure, however, does not address problems that occur when DBEs certified in their home state attempt to become certified in other states. As we mentioned in the ANPRM, DBEs and prime contractors have frequently expressed frustration at what they view as unnecessary obstacles to certification by one state of firms located in other states. They complain of unnecessarily repetitive, duplicative, and burdensome administrative processes and what they see as the inconsistent interpretation of the DOT rules by various UCPs. There have been a number of requests for nationwide reciprocity or some other system in which one certification was sufficient throughout the country.

The Department believes that more should be done to facilitate interstate certification. Interstate reciprocity has always been authorized under Part 26 (*see* § 26.81 (e) and (f)), and in 1999 we issued a Q&A encouraging this approach. To further encourage such efforts, the Department issued another Q&A in 2008, suggesting an approach to facilitating interstate certifications. In the ANPRM, we asked for comment on proposing a regulatory provision based on this guidance, or, in the alternative, whether some version of the nationwide certification reciprocity or Federalizing the certification process would be desirable. We pointed out that nationwide reciprocity could raise concerns about firms engaging in forum shopping to find the "easy graders" among certifying agencies. Federalizing certification, such as having a unitary certification system operated by DOT, would likely raise significant resource issues. Such an approach could also result in less local "on the ground" knowledge of the circumstances of applicant firms, which can be a valuable part of the certification process. The Department asked for comment on how, if at all, these issues could be addressed, and whether there is merit in one or another nationwide approach to certification.

There were about 30 comments on this subject. Most of them favored taking steps to make interstate certification easier. Thirteen commenters favored one variety or another of national reciprocity, with eight of these suggesting that, where a UCP had qualms about an out-of-state firm's bona fides, the UCP could remove the firm's certification after the fact. That is, a firm certified in its home state, State A, would send its certification to State B. State B would immediately put the firm on its list of certified firms, and the firm would become eligible immediately to participate as a DBE. However, State B could subsequently decertify the firm if it appeared that the certification in State A was obtained by fraud or was otherwise invalid. One comment endorsed the rebuttable presumption approach suggested in the Department's Q&A. Three favored one version or another of Federalizing certification, either by having the Department maintain a centralized certification database or having the Department make certification decisions other than, perhaps, the initial decision in each case.

Other commenters expressed some concerns about reciprocity. Three commenters favored using paperwork submitted to other states to reduce administrative burdens, but reserving to each state the right to make its own decision. Another four commenters opposed or had serious doubts about reciprocity, expressing concerns such as the possibility of forum shopping or variations in state laws that might affect the validity of State A's certification in State B. Three commenters emphasized the necessity for better and more uniform training, without which, some thought, reciprocity would be unlikely to work.

As the Department stated in the ANPRM, we favor making interstate certification easier and reducing burdens on small businesses seeking to work in more than one state. Before 1999, businesses had to make multiple applications in each state if they wanted to work as a DBE for more than one DOT recipient. The Department dealt successfully with that problem by creating the UCP system in the 1999 revision to the DBE regulation. National reciprocity or one-stop shopping for a single nationwide certification system are worthwhile goals to discuss, but the Department believes that an incremental approach is more likely to be practicable.

It is important to keep in mind that certification has two purposes. One is to foster and facilitate DBE participation by as many firms as can be determined to be eligible. The other is to preserve the integrity of the program, a strong certification system being the first line of defense against program fraud. To some extent, these goals can be in tension with one another. We believe that the concerns expressed by commenters about issues like forum shopping, training, and variations in state laws have validity. Recipients' concerns about having the integrity of their programs damaged by having to accept what they view as poorly-considered certification decisions made elsewhere are also important. The Department's task is to balance, as best we can, the desire to make interstate certification less onerous for small businesses with the imperative of maintaining the integrity of the program.

A seamless, nationwide, one-stop-shopping eligibility process for all firms is, in a sense, the "holy grail" of certification. The Department does not believe we are currently in a position to make this objective a reality. As commenters pointed out, better nationwide uniform training (which has been proposed in Congress as a requirement in pending FAA reauthorization legislation) and considerable additional resources at the Federal level (*e.g.,* for the database and staff that would likely be necessary to make a more centralized certification system practical) are not yet in place. Given what the Department views as the very real concerns about forum shopping and variations in the quality of certifications that commenters and participants in DOT stakeholder meetings have expressed, we believe that moving at this time to a nationwide reciprocity approach would be premature and could endanger the integrity of the program.

As noted above, several commenters favored a slightly modified national reciprocity approach in which a firm certified in its home state would automatically be certified in "State B," immediately eligible to participate as a DBE in State B's contracts. However, if State B determined that the firm had obtained its home state certification by fraud, or other information questioning its eligibility came to State B's attention, State B could remove the firm's certification. In our view, this approach does not differ significantly from a straight national reciprocity approach, in that the ability to decertify a certified firm already exists. Moreover, the "certify first and ask questions later" tenor of this approach does not inspire confidence: by the time the questions got asked, and a dubious firm removed from the eligible list, it could have received contracts in place of genuinely eligible firms. As a practical matter, it is hard to imagine how a certification agency in, say, Utah, would learn in a timely fashion about fraud or other problems with a firm originally certified in, for example, Florida.

Having considered the comments, the Department believes the best course is to propose a "rebuttable presumption" approach akin to the Department's recent guidance Q&A. Proposed

regulatory language to carry out this approach is found in §§ 26.84 through 26.85 of the NPRM. Under this approach, a firm certified in its home state would not have to create a second application package. It would send its home state application package, together with other existing documentation (*e.g.,* its affidavits of no change submitted to the home state since the time of the firm's original certification), to State B. State B would obtain a copy of the on-site review report from the home state. State B would be required to certify the firm within 30 days from the date it received this information unless State B had good cause to object to the home state's certification. If it objected, State B would hold a proceeding similar to a decertification proceeding in this case, in which State B would bear the burden of proof to show that the firm should not be certified in State B, notwithstanding its certification in State A. The Department seeks comment on the burden of proof in such a proceeding: Should the firm, rather than State B, bear this burden? This latter approach would be more consistent with the usual rule that the applicant carries the burden of proof with respect to eligibility matters, but it could limit the extent to which the new procedures would actually facilitate interstate certification.

This approach is a significant incremental step toward nationwide reciprocity, which would significantly reduce burdens and obstacles in the path of firms seeking certification outside their home states. Within 30 days of providing copies of existing documentation to State B and receiving a copy of State A's on-site review report, the firm would either be certified in State B or be on notice of specific problems with its eligibility that State B had found. The opportunity for a hearing would have to take place within the next 30 days, with a decision issued 30 days after that. The Department expects that, because providing notice and a hearing and issuing a decision on this "fast track" basis is not something that UCPs would do lightly, UCPs would not overuse their authority to delay certification pending this process. Of course, as is now the case, UCPs could accept the home state's certification without further review.

The Department seeks comment on whether the 30-day period for initial review of an out-of-state certification, and a decision on whether to accept it, is an appropriate time period. Would this period place unwarranted pressure on State B to accept State A's certification, even if it were not warranted? On the other hand, would a longer period defeat the purpose of the proposed interstate certification process? Again, the question goes to achieving the best balance between the two purposes of the proposed process.

The Department seeks comment on one potential technical problem in this proposed system. When it is asked by State B to send an on-site review of a firm certified in State A, State A is supposed to send a copy of the report to State B within seven days. In this era of e-mail and pdf documents, doing so should be quick and easy. However, what happens if State A does not provide a timely response? Proposed § 26.84(e) would say that if State B has not received the report by 14 days after State B's request, State B may hold action on the firm's application in abeyance pending receipt of State A's report. State B would need to inform the firm of the situation. The Department seeks comment on what, if anything, the Department should do in a final rule to address situations in which a State A's response to a request for an on-site report is delayed.

In proposing these new provisions to the DBE rule, the Department is also proposing to make certain changes to existing rules. We would remove § 26.83(e), which is no longer needed in light of the proposed new § 26.84 interstate certification procedures. We would also amend § 26.83(h) to put to rest a misunderstanding that has continued to exist, despite the Department's efforts to clarify it. Once a firm is certified as a DBE, it stays certified unless and until it is decertified using the procedures of § 26.87, the rule's decertification procedure. There is no periodic "recertification" or "reapplication" procedure required or even authorized. Certifications do not lapse after a given number of years. However, UCPs can, and, in our view, should, review each existing certified firm's eligibility, including a new on-site review, from time to time. The Department seeks comment on the most appropriate interval for such reviews (comments to the ANPRM suggested periods of between three and six years).

One phenomenon the Department's staff has noticed in recent years is the withdrawal by applicants of their applications before a UCP has made a decision in the matter. In some cases, this may reflect "games-playing" by applicants of dubious merit, as they seek repeatedly to revise their organizations to avoid problems that come up in the UCP's review of the application, without triggering the waiting period for reapplication that follows a denial of the application. However, in other cases, there can be innocent explanations for a withdrawal. The Department seeks comment on whether the rule should be amended to authorize recipients to apply to firms withdrawing an application the same reapplication waiting period that they can apply after a denial. This would reduce administrative burdens on certifying agencies. However, doing so might also penalize firms with legitimate reasons for withdrawing and resubmitting an application or create the perception or reality that recipients might act inconsistently, seeming to favor some firms over others with respect to applying the reapplication period.

Current §§ 26.84 and 26.85 relate to a 1999 memorandum of understanding (MOU) between DOT and SBA concerning DBE certification of SBA 8(a) and 8(d) firms and 8(a) and 8(d) certifications of certified DBEs. This MOU lapsed in 2004 and has not been renewed. Consequently, much of the existing material in these sections has become outdated. Proposed § 26.85 would continue a portion of the current provisions. If an 8(a) firm applies to a DOT UCP, the 8(a) firm could submit its SBA application package in lieu of a new DBE application package. The UCP would have to do the statutorily-mandated on-site review of the firm, since on-site reviews are not normally part of the 8(a) application process. The UCP could also request additional information from the applicant to ensure that all Part 26 requirements are met and that all information has been updated. The UCP would have to certify the firm unless information from the on-site review and other information received by the UCP demonstrates that the firm does not meet Part 26 eligibility criteria. If the 8(a) firm is not from the UCP's state, the UCP would not have to process the application in the absence of the home state's on-site review report, which it would obtain in the same way as it obtains such reports under the "rebuttable presumption" system of proposed § 26.84(d)(1).

The proposed § 26.84 contains the proposed rebuttable presumption reciprocity system. When this section refers to State A (a firm's home state) or State B, it means the UCP of that state. As under the current rule, a UCP always has the option of accepting, without further ado, a certification by another state's UCP. The only new element this provision would add is a basic requirement for the UCP to verify that the out-of-state certification presented by the applicant is genuine.

The main obligation of a firm seeking to get certified outside its home state is

to provide "State B" with a full package of all relevant existing documentation, including its home state application, affidavits of no change, reports of changes, decisions or correspondence relating to certification matters from other states, certification appeal decisions, etc. Any prudent company would keep photocopies or electronic versions of all this documentation, and firms would send in copies of this documentation, rather than generating new documents. There would have to be an affidavit, under penalty of perjury, that the documents were full, complete, and unaltered.

When State B receives this full package of information, it contacts the home state and requests the on-site review report. It is crucial to the operation of this system that the home state respond promptly; otherwise, the certification of the firm can be delayed (see proposed paragraph 26.84(e)). State B must certify the firm within 30 days, unless it finds good cause to believe that the firm should not be certified. If State B fails to respond within 30 days, the Department would regard the firm as having been certified.

Good cause to object to a reciprocal certification could arise from a number of sources: evidence that the home state certification had been obtained fraudulently or if there was new evidence not available to the home state; differences in state law (*e.g.,* home state does not require a professional license for the person controlling a given type of company; State B law does impose such a requirement); or the information the applicant provided was inadequate or insufficient or otherwise not meet the rule's requirements (*e.g.,* the applicant failed to disclose a denial or decertification in another state).

One of the proposed bases to find good cause bears a bit more discussion. The proposed language would permit State B to find good cause if the home state's certification was factually erroneous or inconsistent with Part 26. For example, suppose State B reviews the documentation used by the home state to certify Firm Y and finds an outcome-determinative fact about Firm Y that the home state overlooked, or State B notices that the home state had based its decision on what is clearly a misreading or misinterpretation by the home state of Part 26 or DOT guidance. In these cases, under the proposal, State B could find good cause to begin a proceeding to deny reciprocal certification. On the other hand, it is often the case that reasonable people can differ in their conclusions about whether the facts surrounding a firm's application demonstrate that the firm meets Part 26 criteria. We would not want this provision simply to become a way for what amounts to no more than differences of opinion to obstruct interstate certification. We seek comment on how, if at all, the language of this provision should be refined to avoid that result.

Where the UCP finds good cause, it must so notify the firm, and provide the reasons for its finding. The firm must have the opportunity, within 30 days, for a proceeding—including a hearing, if the firm wants it—that is essentially the same as a decertification hearing. Importantly, as in a decertification proceeding, the burden of proof is on the UCP to demonstrate that the firm is ineligible. The UCP must render its decision within another 30 days. The Department proposes these short time frames in the belief that reciprocal certification actions should be on a fast track, lest the ability of a firm to become certified outside its home state becomes overly subject to bureaucratic delay.

One of the issues that arises in discussions of reciprocity of certifications is how to handle denials of certification and decertifications. If firm X is certified in its home state, reciprocally certified in State B, and then decertified in his home state, what is State B supposed to do? If, in the "rebuttable presumption" process described above, the home state certifies Firm X, but State B rejects the firm's certification after the hearing process, what is State C supposed to do when Firm X applies for certification there?

In this NPRM, we are proposing to have UCPs send to the Departmental Office of Civil Rights (DOCR) online database information about firms whose applications have been denied, which have been decertified, or which have been rejected for reciprocal certification after the rebuttable presumption process described above, as well as the date of the action and a very brief summary of the reason for the action. UCPs would be responsible for checking the DOCR Web site to see if any applicant for certification or currently certified firm appears on the list. For example, if State D's UCP saw Firm X (which State D had certified) on the list as having been decertified by State F's UCP, State D's UCP would request from the State F's UCP a copy of State F's decertification decision. State F's UCP would promptly provide the copy. State D's UCP would take the information in State F's decision into account in determining what action, if any, to take with respect to Firm X. The Department seeks comment not only on the merits of this proposal but also on any other measures that would address this overall issue.

The Department intends that this interstate certification process apply to airport concessions DBEs as well as those DBEs who seek work on Federally-assisted contracts. Consequently, we will subsequently propose a conforming amendment to 49 CFR Part 23.

Fostering Small Business Participation

One of the matters discussed in the ANPRM was the issue of "unbundling," as well as other ways of reducing barriers to the participation of small businesses, including DBEs, on DOT-assisted contracts. The relatively small number of comments on this subject generally suggested that while unbundling was a good thing, it was difficult to achieve, and recipients should have discretion concerning whether and how to implement initiatives in this area.

The Department believes that fostering small business participation in a race-neutral way is an important component of a successful DBE program. For that reason, we are proposing to require recipients to create a small business element of their DBE programs, that could include a number of different approaches. The NPRM, in § 26.39, proposes a menu of strategies that are neither exhaustive nor mandatory to include in this program element. The Department seeks comment on this overall approach, as well as on the individual menu items proposed. Are there additional strategies that should be considered? How much time should recipients be given to amend their DBE program plans to include a small business element?

As noted in a March 2010 DBE conference held by the Department's Office of Small and Disadvantaged Business Utilization, some states (*e.g.,* Missouri, Wisconsin) have devised innovative approaches to increasing small business and DBE participation. The Department seeks comment on the extent to which this experience can be generalized and on whether any elements of these approaches should be included as recommended or required practices in the DBE regulation.

The pending FAA reauthorization legislation mentioned above would direct the Department to issue rules to prohibit discriminatory or excessive bonding practices. The Department seeks comment on whether there are such practices, what they are, and how DOT rules could best be crafted to implement such a statutory requirement, if it is enacted. For example, we have heard in stakeholder meetings that prime contractors sometimes require subcontractors to be

bonded at a level well above the amount of the subcontract or in a way that duplicates bonding that has already been provided to the project owner. Do such practices exist, and, if so, are they common?

Terminations and Substitutions of DBE Subcontractors

The Department had noted some concerns about termination and substitution practices by prime contractors that negatively impacted DBE subcontractors committed during the contract award process and sought comment on whether § 26.53(f)(1) should be modified. There was overwhelming support to revise the section by recipients and DBE trade groups in their response to this inquiry. They supported requiring recipients to concur in terminations and substitutions of DBE subcontractors who are being used for DBE credit on a contract, with concurrence to be provided only if the action was for good cause. Prime contractors and their respective trade groups took a contrary view and wanted to retain their independent authority. These commenters suggested that recipients should have no say regarding a change or termination of a DBE subcontractor in instances where the change does not impact DBE goal achievement.

Many recipients commented that they currently do require prime contractors to receive written approval from the recipient prior to the prime substituting DBE subcontractors. In addition, some comments recommended that the Department adopt a regulation containing a standard similar to that required under California Law PCC 4107, which requires notice prior to termination.

The Department is cognizant of the prime contractors' position that primes should have the ability to remove a nonperforming or poorly performing subcontractor. However, the Department does not believe a revision to this section of the rule requiring a recipient's approval prior to termination of a DBE subcontractor for other than good cause would undermine this authority or insert an onerous burden on prime contractors. Moreover, based on the comments from recipients, this change would formalize a practice already undertaken by many recipients. Accordingly, the Department is proceeding with the proposed revision, proposed to be located in § 26.53(f), in order to maintain program integrity and ensure a more meaningful commitment to a particular DBE firm that the prime contractor listed as part of the contract award process. The proposed section includes a list of actions that would constitute good cause for this purpose. We seek comment on whether there should be any additions or changes to this list.

Counting Issue

The ANPRM discussed the background of this issue in some detail (*see* 74 FR 15905). For convenience of readers, we are summarizing that discussion here. Section 26.55(a)(1) of the Department's DBE rule provides as follows:

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(a)(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate.

The preamble discussion of this provision said the following:

The value of work performed by DBEs themselves is deemed to include the cost of materials and supplies purchased, and equipment leased, by the DBE from non-DBE sources. For example, if a DBE steel erection firm buys steel from a non-DBE manufacturer, or leases a crane from a non-DBE construction firm, these costs count toward DBE goals. There is one exception: if a DBE buys supplies or leases equipment from the prime contractor on its contract, these costs do not count toward DBE goals. Several comments from prime contractors suggested these costs should count, but this situation is too problematic, in our view, from an independence and commercially useful function (CUF) point of view to permit DBE credit. 64 FR5115–16, February 2, 1999.

This provision creates an intentional inconsistency between the treatment of purchases or leases of items by DBEs from non-DBE sources. If a DBE contractor buys or rents items from a non-DBE source other than the prime contractor, the recipient counts those items for DBE credit on the contract. If a DBE subcontractor buys or rents the same items from the prime contractor for the DBE's subcontract, the recipient does not award DBE credit for the items.

The policy rationale for this provision, as the preamble quotation notes, is that permitting the prime contractor to provide an item to its own DBE subcontractor, and then claim DBE credit for the value of that item, raises issues concerning whether the DBE is actually independent and performing a CUF. The rule regards the item as having been provided by the prime contractor to the project and, consequently, not as part of the "work actually performed by the DBE." Therefore, the rule does not permit it to be counted for DBE credit.

Some prime contractors and DBE contractors have objected to this provision, both in correspondence with the Department and in stakeholder meeting discussions. They assert that 26.55(a)(1) prevents DBE firms from successfully competing for projects involving the purchase of commodities like asphalt, concrete, or quarried rock, since the DBE credit they could bring to the project would be limited to the installation and labor costs of the job (likely a relatively small percentage of the overall contract). This is particularly true, they say, when there are only one or two suppliers of the commodity within a reasonable distance of the DBE, and those suppliers are owned by or affiliated with a prime contractor.

Participants in the stakeholder meeting discussions also suggested that the current rule could lead to competitive inequities between prime contractors. For example, suppose Prime Contractor A has an asphalt plant—the only one in the area—and Prime Contractor B does not. Both are bidding on a highway construction contract on which there is a DBE goal. Prime Contractor A cannot count for DBE credit the asphalt that a DBE paving contractor buys, while Prime Contractor B can. This makes it easier for B to meet the DBE goal on the contract.

The ANPRM asked for comments on four alternatives: (1) No change; (2) keep current rule in place, but allow recipients to make exceptions in limited circumstances; (3) permit items obtained by DBEs for a contract to be counted for DBE credit regardless of their non-DBE source; or (4) prohibit items obtained by a DBE from any non-DBE source to be counted for DBE credit. Twenty-eight comments addressed this issue, and each of the options attracted support (11 favored option 1, 6 favored option 2, 7 favored option 3, and 4 favored option 4).

The Department believes that the basic policy objective of the current regulation—preventing items actually supplied by prime contractors from counting for DBE credit by being passed through their DBE subcontractors—is a sound one. Simply allowing such items to count toward DBE goals in all

situations, as option 3 would provide, is too contrary to this objective for the Department to consider further. Option 2's authorization of exceptions to this general rule could lead to very inconsistent, and arguably arbitrary, results within and among states. Option 4 establishes consistency in how items obtained by DBEs are treated, but would likely result in reduced dollar amounts overall DBE participation. Option 1, which received at least plurality support among commenters and prevents prime contractors from counting as DBE participation items that they themselves contribute to a project, appears the best approach. Consequently, the Department is not proposing to change this section. We will continue to consider comments on the issue, however.

Application and PNW Forms

The ANPRM asked for comments on potential improvements to the rule's application and personal net worth (PNW) forms. This is an important matter, and one requiring detailed attention as well as thorough analysis of the information collection burdens involved. For this reason, while the Department is currently working on revised forms, we are deferring proposing new forms to a subsequent NPRM.

Certification-Related Provisions

This NPRM also proposes a number of modifications to the certification provisions of the rule, based primarily on the Department's experience in certification appeals cases and other issues that have come to the Department's attention. The Department is continuing to review and update certification provisions, and we anticipate proposing several additional modifications in the subsequent NPRM that will also propose revised PNW and application forms. Minor technical changes to references within the existing definitions are also proposed.

Section 26.71 What rules govern determinations concerning control?

"Generic" certification of a firm as a DBE is not proper in the program. Under § 26.71(n), DBEs are certified by recipients and UCPs only with respect to specific types of work in which the certifying agency has determined that the socially and economically disadvantaged owners control. When applying for certification, an applicant is asked to describe the "primary business and professional activities the firm is engaged in." The types of work a firm can perform (whether on initial certification or when a new type of work is added) should be described in terms of six-digit North American Industry Classification System (NAICS) codes, or another classification scheme of equivalent detail and specificity. In order to meet its burden of proof, a firm must provide detailed information the certifying agency needs and/or requests so that the certifying agency may make an appropriate NAICS code designation. Firms are also responsible for ensuring that the NAICS codes cited in a certification are up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. To assist recipients and firms address these issues, the Department is proposing an amendment to § 26.71(n), which would codify the substance of a guidance Q & A the Department issued in 2009.

Section 26.73 What are other rules affecting certification?

The Department has learned, through the Department's certification appeal process and from oversight of recipients' DBE programs, that some recipients may deny certification to firms on the basis that they do not appear prepared to perform a particular project, are newly formed, or lack employees or specific pieces of equipment. We have learned that recipients are taking this action after perceiving the firm incapable of success later down the road. This is somewhat of a premature determination and akin to a finding that a firm's work would not be counted for DBE credit sometime in the future. We have consistently held that counting issues are separate from certification; and we continue to hold that firms should be evaluated based on their present circumstances. The Department therefore, is restating § 26.73(b), which prohibits a recipient from refusing to certify a firm solely on the basis that it is a newly formed firm; and adding a section (b)(2) to emphasize also that recipients should not refuse to certify a firm that has not completed contracts or projects at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. We stress that if the firm meets the size, ownership, and control requirements of this part, the firm is eligible for certification.

A firm must be a going concern in order to be certified. It is not realistic to expect a recipient, for example, to conduct an on-site review of a business plan that exists only on paper. Nevertheless, given that one of the primary purposes of the DBE program is to serve as an incubator for start-up businesses, recipients should not create unauthorized or unnecessary barriers to the participation of newer firms. For example, it would be contrary to this section for a certifying agency to insist on two years of business tax returns from a firm that had only been in business six months.

Section 26.83 What procedures do recipients follow in making certification decisions?

The Department wants to reemphasize, in § 26.83(h), that once a firm is certified, is stays certified unless and until its certification is removed under § 26.87. Certifications do not expire or lapse, whether after three years or any particular number of years. Firms cannot be required to reapply for certification. However, recipients may properly conduct certification reviews of certified firms, including a new on-site review, three years from the date of the most recent certification of the firm or sooner if changed circumstances relating to the firm's ownership, control, size or disadvantaged status warrant. In addition, recipients may conduct on-site visits on an unannounced basis at the firm's offices and job sites if information comes to a recipients' attention regarding the firm's eligibility. The Department seeks comment on whether periodic new on-site reviews should be conducted (*e.g.,* every three or five years) to ensure that information about certified firms is up-to-date and that firms have not changed in ways that adversely impact their eligibility? Would such a requirement make the interstate certification process work better? What would the resource implications be?

One of the problems that the Department has seen is that on-site reviews, once conducted, are not periodically updated by some certifying agencies. The result may be that the information in an on-site review report may be stale. This is a particular concern given the interstate certification provisions of proposed § 26.84, in which a "State B' must rely on the on-site report of the applicant firm's home state. If the on-site report is 5 or 10 years old, can other states safely rely on the information? If not, should we require updated on-site reviews to be conducted by firms' home states at a given interval (*e.g.,* every three years)? Should states be permitted to charge user fees to firms for updated on-site reviews? Are there ways of reducing burdens of on-site reviews (*e.g.,* by use of videoconferencing or other technologies)? Could the need for updated on-site reviews be mitigated if firms had to submit additional annual update information (*e.g.,* PNW statements, tax returns, data about the

firm's finances and transactions)? The Department seeks comment on this topic.

The Department has learned, through the Department's certification appeal process and oversight of recipients' DBE programs, of instances in which applicants may have been unaware that their application lacked the necessary information, through either a misunderstanding of the process and/or submitting some, but not all, of the information a recipient needs to make a decision. It is therefore useful for recipients to inform each applicant within 20 business days after receiving an application, whether the application is complete and ready for evaluation, and if not, what additional information or action is required. Many recipients engage in this practice and promptly notify firms, either by e-mail or certified mail of their need for additional information. The addition of a requirement to this effect, therefore, does not seem onerous and we added a new lead sentence in paragraph (l) to reflect this addition.

Other Provisions

The Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B of Part 26, has long been required to be submitted by DOT recipients. The form itself states that FHWA and FTA recipients submit the form twice a year, while FAA recipients submit it annually. It was called to our attention, however, that body of the regulation does not specifically reference the form. To remedy this situation, we propose adding such a reference to § 26.11. There is no change to the existing requirement for submission of the form and no additional information collection burden involved.

In § 26.45, the NPRM would clarify requirements concerning project overall goals and the implementation of the recent amendment calling for submission of overall goals on a triennial, rather than annual, basis. In § 26.51, the NPRM would clarify that, if a recipient had an all race-neutral overall goal, it nevertheless would use race-conscious contract goals if, part way through the year, it became necessary to do so in order to have a reasonable opportunity to meet the overall goal. This proposed amendment is related to the proposed "accountability" mechanism in proposed § 26.47. Finally, an obsolete citation to suspension and debarment rules would be replaced by the current citation in § 26.107.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This is a nonsignificant regulation for purposes of Executive Order 12866 and the Department of Transportation's Regulatory Policies and Procedures. The proposals involve administrative modifications to several provisions of a long-existing and well-established program, designed to improve the program's implementation. The proposals, if made final, would not alter the direction of the program, make major policy changes, or impose significant new costs or burdens.

Regulatory Flexibility Act

A number of provisions of the NPRM would reduce small business burdens or increase opportunities for small business, notably the interstate certification process and the small business DBE program element proposals. Small recipients would not be required to prepare or transmit reports concerning the reasons for overall goal shortfalls and corrective action steps to be taken. Only State DOTs, the 50 largest transit authorities, and the 30–50 airports receiving the greatest amount of FAA financial assistance would have to file these reports. The task of sending copies of on-site review reports to other certification entities fall on UCPS, which are not small entities, and in any case can be handled electronically by e-mailing PDF copies of the documents. While all recipients would have to input information about decertifications and denials into a DOT database, this would be a quick electronic process that would not be costly or burdensome. The NPRM would not make major policy changes that would cause recipients to expend significant resources on program modifications. For these reasons, the Department certifies that the NPRM, if made final, would not have a significant economic effect on a substantial number of small entities.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under the Order and have determined that it does not have implications for federalism, since it merely makes administrative modifications to an existing program. It does not change the relationship between the Department and State or local governments, pre-empt State law, or impose substantial direct compliance costs on those governments.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, DOT will submit Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before OMB decides whether to approve these proposed collections of information and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the collection of information should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503. We also request that a copy of such comments be sent to the docket for this NPRM. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

The items in this NPRM for which DOT intends to seek Paperwork Reduction Act approvals are the following:

Proposed § 23.39(b): Submission of small business program element.

Proposed § 26.47 (c): Submission of analysis of reasons for falling short of overall goal corrective actions.

Proposed § 26.84(c)(4): Affidavit concerning information of certification information.

Proposed § 26.84(f): Submission of certification information to DOT database.

List of Subjects in 49 CFR Part 26

Administrative practice and procedure, Airports, Civil rights, Government contracts, Grant-programs—transportation, Mass transportation, Minority businesses, Reporting and record keeping requirements.

Issued This Day of May, 2010, at Washington DC.

Ray Lahood,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend 49 CFR part 26 as follows:

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for part 26 continues to read as follows:

Authority: 23 U.S.C. 324; 42 U.S.C. 2000d, *et seq.* ; 49 U.S.C 1615, 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105–178, 112 Stat. 107, 113.

2. Add § 26.11(a) to read as follows:

§ 26.11 What records do recipients keep and report?

(a) You must transmit the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.

* * * * *

3. Revise § 26.31 to read as follows:

§ 26.31 What information must you include in your DBE directory?

You must maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE.

4. Revise § 26.37 (b) to read as follows:

§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

* * * * *

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (*e.g.,* as the result of modification to the contract) is actually performed by the DBEs to which the work was committed, where the DBEs' work is intended to count toward DBE goals. This mechanism must include a written certification for each such contract that you have reviewed contracting records for and monitored the work on-site for the contract to ensure that DBEs have actually performed the work in question.

* * * * *

5. Add a new § 26.39 to subpart B, to read as follows:

§ 26.39 Fostering small business participation.

(a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program. As part of this program element you may include, but are not limited to, the following strategies:

(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (*e.g.,* $1 million).

(2) In multi-year design-build contracts or other large contracts (*e.g.,* for "meagprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

(4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(5) If you are implementing your overall goal wholly through race-neutral measures,, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

6. Revise § 26.45(e)(2), (e)(3), (f)(1), and (f)(2) to read as follows:

§ 26.45 How do recipients set overall goals?

* * * * *

(e) * * *

(2) If you are an FTA or FAA recipient, as a percentage of all FTA or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the three forthcoming fiscal years.

(3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

(i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.

(ii) A project goal covers the entire length of the project to which it applies.

(iii) The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.

(iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

(f)(1)(i) If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable, and posted on that agency's Web site.

(ii) You must submit to the operating administration for approval any significant adjustment you make to your goal during the three-year period based on changed circumstances. The operating administration may direct you to undertake a review of your goal if necessary to ensure that the goal continues to fit your circumstances appropriately.

(iii) While you are required to submit an overall goal to FHWA, FTA, or FAA only every three years, the overall goal and the provisions of § 26.47(c) apply to each year during that three-year period.

(2) If you are a recipient and set your overall goal on a project or grant basis as provided in paragraph (e)(3) of this section, you must submit the goal for review at a time determined by the FHWA, FTA or FAA Administrator, as applicable.

* * * * *

7. Add new paragraph (c) and (d) to § 26.47, to read as follows:

§ 26.47 Can recipients be penalized for failing to meet overall goals?

* * * * *

(c) If the awards and commitments shown on your Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the Department as implementing your DBE program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3) (i) If you are a State highway agency; one of the 50 largest transit

authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 60 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval. If the operating administration approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As a transit authority or airport not meeting the criteria of paragraph (c)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to FTA or FAA on request for their review.

(4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race conscious/race neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in §§ 26.103 or 26.105 of this part and other applicable regulations,for failing to implement your DBE program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (c)(3) of this section;

(ii) FHWA, FTA, or FAA disapproves your analysis or corrective actions; or

(iii) You do not fully implement the corrective actions to which you have committed or conditions that FHWA, FTA, or FAA has imposed following review of your analysis and corrective actions.

(d) If, as recipient, your 6-month Uniform Report of DBE Awards or Commitments and Payments (for FHWA and FTA recipients) or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that you are falling short of the DBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require you to make further good faith efforts, such as by modifying your race-conscious/race neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

8. Revise § 26.51(b)(1), (f)(1), and the example to paragraph (f)(1), to read as follows:

§ 26.51 What means do recipients use to meet overall goals?

* * * * *

(b) Race-neutral means include, but are not limited to, the following:

(1) Arranging solicitations; times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39 of this part.

* * * * *

(f) * * *

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary to do so to avoid falling short of our overall goal.

Example to Paragraph (f)(1): Your overall goal for Year 1 is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year 1. However, if part way through Year 1, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year 1, you would begin setting race-conscious DBE contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

* * * * *

9. In § 26.53, redesignate paragraph (g) as paragraph (i), redesignate paragraphs (f)(2) and (3) as paragraphs (g) and (h) respectively, revise paragraph (f)(1), and add new paragraphs (f)(2) through (5) to read as follows:

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

* * * * *

(f)(1) You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your written concurrence This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with a substitute DBE firm.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

(3) For purposes of this paragraph, good cause includes the following circumstances:

(i) The listed DBE subcontractor fails or refuses to execute a written contract;

(iii) The listed DBE subcontractor fails or refuses to perform its subcontract;

(iv) The listed DBE subcontractor fails to perform its work on the subcontract in a way that is acceptable to you;

(v) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable bond requirements;

(vi) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(vii) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law;

(viii) You have determined that the listed DBE subcontractor is not a responsible contractor;

(ix) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

(x) The listed DBE is ineligible to receive DBE credit for the type of work required;

(xi) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract.

(xii) Other good cause that you determine compels the termination of the DBE subcontractor, with the concurrence of FHWA, FTA, or FAA, as applicable.

(3) Before transmitting to you its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.

(4) The prime contractor must give the DBE 5 days to respond to the prime contractor's notice and advise you and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why you should not approve the prime contractor's action.

(5) In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

* * * * *

10. Revise § 26.67 (a)(2)(i) to read as follows:

§ 26.67 What rules determine social and economic disadvantage?

(a) * * *

(2)(i) You must require each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire under 49 CFR part 23) whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed $1.3 million.

* * * * *

11. Revise § 26.71(n) to read as follows:

§ 26.71 What rules govern determinations concerning control?

* * * * *

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You may not, in this situation, require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(1) The types of work a firm can perform (whether on initial certification or when a new type of work is added) must be described in terms of NAICS codes or a classification scheme of equivalent detail and specificity. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned, where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification.

(2) Firms and recipients must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.

(3) If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

(4) A certifier is not precluded from changing a certification classification or description if there is a factual basis in the record. However, certifiers should not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

* * * * *

12. Revise § 26.73(b) to read as follows:

§ 26.73 What are other rules affecting certification?

* * * * *

(b)(1)You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

(2) You must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of this Part, the firm is eligible for certification.

* * * * *

§ 26.81 [Amended]

13. Amend § 26.81(g) by removing the period at the end of the last sentence and adding the words "and shall revise the print version of the Directory at least once a year."

14. In § 26.83, remove and reserve paragraph (e), revise paragraph (h), and add a new paragraph (l) to read as follows:

§ 26.83 What procedures do recipients follow in making certification decisions?

* * * * *

(h) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of § 26.87. You may not require DBEs to reapply for certification. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, three years from the date of the firm's most recent certification, or sooner if appropriate in light of changed circumstances (*e.g.,* of the kind requiring notice under paragraph (i) of this section), a complaint, or other information concerning the firm's eligibility. If information comes to your attention that leads you to question the firm's eligibility, you may conduct an on-site review on an unannounced basis, at the firm's offices and jobsites.

* * * * *

(l) As a recipient or UCP, you must advise each applicant within 20 business days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

15. Revise § 26.84 to read as follows

§ 26.84 Interstate certification.

(a) This section applies with respect to any firm that is currently certified in its home State.

(b) When a firm currently certified in its home State ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm,. without further procedures.

(1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.

(2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or getting written confirmation from the home State.

(c) In any situation in which State B chooses not to accept State A's certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the following information in paragraphs (c)(1) through (4) of this section to State B.

(1) You must provide to State B a complete copy of the application form, all supporting documents, and any other information you have submitted to State A related to your firm's certification. This includes affidavits of no change (*see* § 26.83(j) and any notices of changes (*see* § 26.83(i) that you have submitted to State A, as well as any correspondence you have had with State A's UCP or any recipient concerning your application or status as a DBE firm.

(2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an applicant or certified DBE

in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B.

(3) If you have filed a certification appeal with DOT (*see* § 26.89), you must inform State B of the fact and provide your letter of appeal and DOT's response to State B.

(4) You must submit an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that you have submitted all the information required by 49 CFR 26.84(c) and the information is complete and, in the case of the information required by § 26.84(c)(1), an identical copy of the information submitted to State A.

(d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:

(1) Immediately contact State A and request a copy of the site visit review report for the firm (see § 26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As State A, you must transmit this information to State B within seven days of receiving the request.

(2) Determine, within 30 days, whether there is good cause to believe that State A's certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include, but are not limited to, the following:

(i) Evidence that State A's certification was obtained by fraud;

(ii) New information, not available to State A at the time of its certification, indicating that the firm does not meet all eligibility criteria;

(iii) State A's certification was factually erroneous or was inconsistent with the requirements of this part;

(iv) The State law of State B leads to a result different from that of the State law of State A.

(v) The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.

(3) If, as State B, unless you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 30 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.

(4) If, as State B, you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 30 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.

(i) This notice must meet the requirements of § 26.87(b) of this part and offer the firm the opportunity for a hearing meeting the requirements of § 26.87(d), (e)(2), and (g) of this part.

(ii) If the firm elects to have a hearing, you must ensure that it takes place within 30 days, and your decision must be issued within 30 days after the date of the hearing.

(iii) Consistent with the provisions of § 26.87(d)(1) and (3) of this part, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(iv) The firm's application for certification is stayed pending the outcome of this proceeding.

(v) The firm may appeal the outcome of this proceeding to DOT as provided in § 26.89 of this part.

(e) As State B, if you have not received from State A a copy of the site visit review report by a date 14 days after you have made a timely request for it, you may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, you must, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.

(f)(1) As a UCP, when you deny a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry to the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination online database. You must enter the following information:

(i) The name of the firm;

(ii) The name(s) of the firm's owner(s);

(iii) The type and date of the action;

(iv) The reason for the action.

(2) As a UCP, you must check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.

(3) For any such firm that is on the list, you must promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, you must provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, you must then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

16. Revise § 26.85 to read as follows:

§ 26.85 Certification of SBA 8(a)-certified firms.

(a) As a recipient or UCP, if a firm certified by SBA under its 8(a) program applies to you for certification as a DBE, you must follow the procedures of this section.

(b) When an SBA 8(a)-certified firm applies for certification, you must accept the certification applications, forms and packages submitted by a firm to the SBA for 8(a) program certification, in lieu of requiring the applicant firm to complete your own application forms and packages. The applicant may submit the package directly, or may request that the SBA forward the package to you.

(c) Before certifying a firm based on its SBA 8(a) certification, you must conduct an on-site review of the firm (*see* § 26.83(c)(1)). You may also request additional relevant information from the firm to ensure that the requirements of this Part for DBE certification have been met. If the SBA application package presented by the firm is more than two years old, you must obtain updated information from the applicant.

(d) Unless you determine, based on the on-site review and other information obtained in connection with the firm's application that the firm does not meet the eligibility requirements of subpart D of this part, you must certify the firm.

(e) For an SBA 8(a) firm that you certify under this section, you must determine, based on the on-site and other information you have gathered, the NAICS codes in which the firm may participate in your contracts as a DBE.

(f) You are not required to process an application for certification from an SBA-certified firm having its principal place of business outside the State(s) in which you operate unless there is a report of a "home State" on-site review on which you may rely.

(g) If the SBA 8(a) firm applying to you is already certified as a DBE by another State's UCP, you must use the procedures of § 26.84 of this part, rather

than those of this section, for considering its eligibility.

§ 26.81 [Amended]

17. In § 26.107 (a) and (b), remove "49 CFR part 29" and add in its place, "2 CFR parts 180 and 1200."

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Notices

Federal Register
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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

Rural Housing Service

Notice of Acceptance of Proposals for the Section 538 Multi-Family Housing Guaranteed Rural Rental Housing Program (GRRHP) Demonstration Program for Fiscal Year 2010

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: Through this Notice the Rural Housing Service (Agency) announces the implementation of a demonstration program under the section 538 Guaranteed Rural Rental Housing Program (GRRHP) pursuant to 7 CFR 3565.4 and 7 CFR 3565.17 (Demonstration Programs) for Fiscal Year (FY) 2010. The Demonstration Program's purpose is to test the viability and efficacy of a continuous loan note guarantee through the construction and permanent loan financing phases of a project. Those applications that meet the Demonstration Program's qualifying criteria and are selected to participate will be offered one loan note guarantee upon closing of the construction loan that will be in effect throughout both of the project's construction and permanent phases without interruption.

The Agency will permit approximately $10 million of program loan authority on loans that have already been obligated to participate in this Demonstration Program. Expenses incurred in developing applications will be at the applicant's risk. The following paragraphs outline the timeframes, eligibility requirements, lender responsibilities, and the overall response and application processes.

Eligible Lenders wishing to have their GRRHP obligated, but unfunded guaranteed 538 applications considered for the FY 2010 Demonstration Program must send a signed request on its letterhead with the proposed project details as outlined in the "DEMONSTRATION PROGRAM RESPONSE SUBMISSION ADDRESS" section of this Notice. No other applications will be considered.

Demonstration Program Guidelines

The following guidelines are being provided to facilitate a structured implementation of the program:

1. Demonstration guarantee. The Demonstration guarantee is a guarantee that will be offered to selected lenders who submit applications in response to this Notice. The Demonstration guarantee will consist of one loan note guarantee that will be issued upon closing of the construction loan and will be in effect throughout both of the project's construction and permanent financing phases without interruption.

2. Conditional commitment. Upon approval of an eligible previously obligated guaranteed 538 application from an approved lender, the Agency will modify the outstanding conditional commitment to provide a Demonstration guarantee for the construction and permanent financing phases of the project.

3. Guarantee percentage and payment. Both construction loan advances and permanent loans are eligible for a guarantee subject to the following limitations:

Construction loan advances and permanent loans. The Agency can guarantee the "construction and permanent" financing phases of a project. The Agency cannot, however, guarantee only the "construction" financing phase of a project. Guarantees under the Demonstration guarantee will cover construction loan advances and the subsequent permanent loan. The maximum guarantee of construction advances will not at any time exceed the lesser of: 90 percent of the amount of principal and interest up to default advanced for eligible uses of loan proceeds; and 90 percent of the original principal amount and interest up to default of a loan. Penalties incurred as a result of default are not covered by the guarantee. The Agency may provide a lesser guarantee based upon its evaluation of the credit quality of the loan.

4. Ability. A lender making a construction loan must demonstrate an ability to originate and service construction loans.

5. Guarantee during construction. The Agency will issue a Demonstration guarantee only to an approved lender.

6. Demonstration guarantee program compliance requirement. For a Demonstration guarantee, after the loan note guarantee is issued, the following items will have to be submitted and approved by the Agency within the timeframe stipulated by the Agency:

(i) A certificate of substantial completion;

(ii) A certificate of occupancy or similar evidence of local approval;

(iii) A final cost certification in a form acceptable to the Agency;

(iv) A complete copy of the permanent loan closing docket; if a separate closing is conducted for the permanent loan; and

(v) Any other information necessary for the Agency to comply with its regulations.

Items (i), (ii), and (iii) are only required if the project is constructed. To facilitate the implementation of the program, an addendum may be attached to certain program forms to include relevant Demonstration Program requirements.

The selected applicants will be subject to the Demonstration Program guidelines in this Notice, and GRRHP's controlling statute, regulations, and handbook as amended. The GRRHP operates under the Housing Act of 1949, as amended, particularly section 538, and regulations at 7 CFR part 3565. The GRRHP Origination and Servicing Handbook (HB–1–3565) is available to provide lenders and the general public with guidance on program administration. HB–1–3565, which contains a copy of 7 CFR part 3565 in Appendix 1, can be found at the Rural Development Instructions Web site address *http://www.rurdev.usda.gov/regs/hblist.html#hbw6.*

Demonstration Program Eligibility: GRRHP obligated applications that meet the following criteria will be eligible for consideration to be selected into the Demonstration Program:

1. The project must have been awarded and continue to receive Low Income Housing Tax Credits.

2. The project must have a loan to cost (LTC) ratio equal to or lower than 50%.

3. The Lender must have submitted a timely response to this Notice in accordance with the "DEMONSTRATION PROGRAM RESPONSE SUBMISSION ADDRESS" section of this Notice.

4. A Lender must have submitted its application under the GRRHP 2009 Notice published January 21, 2009, Volume 74 FR 3551–3558, or the GRRHP 2009 Notice published on June 26, 2009, Volume 74 FR 30503–30510 or the GRRHP 2010 Notice published February 26, 2010, Volume 75 FR 8896–8902.

5. The application to be considered must have been obligated from October 1, 2009 to December 17, 2010. However, if the Demonstration Program funds have not been fully utilized by December 17, 2010, the Agency may consider applications obligated on or after October 1, 2008.

6. The Lender must not have closed the construction loan prior to its selection to participate in the Demonstration Program.

Demonstration Program Selection Process

Selections from qualified applications that have requested consideration and met all requirements for this Demonstration Program will be based on priority scores they received on their previously submitted applications, with the highest scoring applications being selected first, until all available Demonstration Program authority is used. In the event of a tie, priority will be given to the application that is in the smaller rural community, and in case of a subsequent tie to the application that has the lowest LTC ratio.

The first round of selections into the Demonstration Program will be made on May 20, 2010. In the event there are not enough qualified requests for selection into the Demonstration Program to utilize all the available Demonstration Program authority, then until all funds are exhausted, an additional selection process will be conducted on the 3rd Friday of each month starting September 17, 2010. December 17, 2010, will be the last possible selection date unless the Final Rule is published as explained below. All applicants will be notified of the selection results no later than 30 business days from the date of selection.

DATES: *Effective Dates:* The GRRHP intends to incorporate the guarantee offered under this demonstration as a permanent part of the program. To that end we have published in the **Federal Register** (January 29, 2009, Volume 75 FR 4707–4710) a proposed rule for "Continuous Construction-Permanent Loan Guarantees." This Notice will terminate upon the earlier of either the publication date of the final rule or December 17, 2010.

Demonstration Program Response Submission Address

Eligible lenders wishing to have their obligated applications considered for selection into the Demonstration Program must submit a signed request (not to exceed one page) on its letterhead that includes the following information:

1. Developer's Name
2. Borrower's Name
3. Project's Name
4. Project's Address (City and State)
5. Project Type (Family, Senior, or Mixed)
6. Project's Total Units
7. Project's Total Development Cost (TDC)
8. Amount of 538 Loan Guarantee
9. Amount of Tax Credits Awarded
10. Amount and Source of Other Financing
11. Loan to Cost (LTC) %
12. Area Population
13. Date obligated or date of Conditional Commitment

Send the Demonstration Program Response Submission Letter with all of the information listed above, along with a copy of the State Office's "Proceed with Application/NOFA Response Selection" letter and a copy of the tax credit award notification to: Tammy S. Daniels, Financial and Loan Analyst, Multi-Family Housing Guaranteed Loan Division, Guaranteed Rural Rental Housing Program, USDA Rural Development, South Agriculture Building, Room 1233, STOP 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781.

Requests may also be faxed to 202–690–3444 or sent by email (signed PDF copies of the above submissions) to *tammy.daniels@wdc.usda.gov.* Eligible lenders mailing a request must provide sufficient time to permit delivery to the submission address. If all the funds set aside for the Demonstration Program have not been utilized, the Agency will continue to accept requests for inclusion into the FY 2010 Demonstration Program until December 17, 2010 or publication of the final rule if earlier. Acceptance by a U.S. Post Office or private mailer does not constitute delivery. Postage due responses and applications will not be accepted.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in this Notice is approved by the Office of Management and Budget (OMB) under OMB Control Number 0575–0174.

Nondiscrimination Statement

"The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider and employer."

Dated: May 3, 2010.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2010–10929 Filed 5–7–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request, Supplemental Nutrition Assistance Program Regulations, Part 275—Quality Control

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on the proposed information collection for the Supplemental Nutrition Assistance Program's Regulations, Part 275—Quality Control. Specifically, the burden associated with the collection of information for the sampling plan, arbitration process, and the good cause process. This collection is a revision of a currently approved collection, OMB No. 0584–0303.

DATES: Written comments must be submitted on or before *July 9, 2010.*

ADDRESSES: 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 has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Tiffany Susan Wilkinson, Program Analyst, Quality Control Branch, Program Accountability and Administration Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 822, Alexandria, VA 22302. You may also download an electronic version of this notice at *http://www.fns.usda.gov/fsp/rules/regulations/default.htm* and comment via e-mail at *SNAPHQ-Web@fns.usda.gov* or use the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 822, Alexandria, Virginia 22302.

All responses to this notice will be included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Tiffany Susan Wilkinson, (703) 305–2805.

SUPPLEMENTARY INFORMATION: *Title:* Supplemental Nutrition Assistance Program's (SNAP) Quality Control Regulations, Part 275.

OMB Number: 0584–0303.

Expiration Date: November 30, 2010.

Type of Request: Revision of a currently approved collection.

Abstract: There are three components of the Quality Control (QC) system that are covered in this proposed information collection. They are: (1) The sampling plan; (2) the arbitration process; and (3) the good cause process. Each State is required to develop a sampling plan that demonstrates the integrity of its case selection procedures. The QC system is designed to measure each State agency's payment error rate based on a statistically valid sample of SNAP cases. A State agency's payment error rate represents the proportion of cases that were reported through a QC review as being ineligible, overissued and underissued SNAP benefits.

The QC system contains procedures for resolving differences in review findings between State agencies and FNS. This is referred to as the arbitration process. The QC system also contains procedures that provide relief for State agencies from all or a part of a QC liability when a State agency can demonstrate that a part or all of an excessive error rate was due to an unusual event that had an uncontrollable impact on the State agency's payment error rate. This is referred to as the good cause process.

The approved burden for the QC system includes the burden for the QC sampling plan, the arbitration process, and the good cause process. The annual reporting burden associated with the QC sampling plan remains at 265 hours. We estimate the annual reporting burdens associated with arbitration and good cause processes to total 936 hours and 160 hours, respectively. The increase in the proposed burden from the currently approved 840 to 936 hours for the arbitration process is due to an increase in the number of State agencies estimated to respond from 14 to 15 and to the estimated number of responses per State agency from 2.5 to 2.6. These increases are a result of State agencies more frequently disagreeing with FNS' findings. The proposed annual reporting burden for the good cause process is unchanged from the currently approved burden of 160 hours. The total reporting burden for the QC system is, therefore, 1,361 hours.

The proposed annual recordkeeping burden associated with the QC sampling plan is 1.25 hours per year. The proposed annual recordkeeping burdens associated with arbitration have increased from 0.83 to 0.92 hours and the good cause process remains at 0.0236 hour. The recordkeeping burden for the arbitration process increased from 0.83 hour to 0.92 hour due to an increase in the estimated number of affected State agencies from 14 to 15 and an increase in the estimated number of responses per State from 2.5 to 2.6. The recordkeeping burden for the good cause process remains at 0.0236 hours. The total burden for recordkeeping is 2.19 hours. As a result, the total annual burden for the QC system, as proposed by this notice, increased from 1,267 to 1,363 hours.

Quality Control System Reporting Burden Associated with the Sampling Plan, Arbitration, and Good Cause:

REPORTING BURDEN

Affected public	Requirement	Number of respondents	Number of responses/ respondent	Total responses per year	Time per response (hrs)	Annual reporting burden (hrs)
State Agencies	Sampling Plan	53	1	1	5	265
State Agencies	Arbitration Process	15	2.6	39	24	936
State Agencies	Good Cause Process	1	1	1	160	160
						1,361

Quality Control System Recordkeeping Burden Associated with the Sampling Plan, Arbitration, and Good Cause:

RECORDKEEPING BURDEN

Affected public	Requirement	Number of records	Number of records/state	Time per record (hrs)	Total annual recordkeeping burden (hrs)	Total annual reporting & recordkeeping burden (hrs)
State Agencies	Sampling Plan	53	1	0.0236	1.25	266.25
State Agencies	Arbitration Process	15	2.6	0.0236	0.92	936.92
State Agencies	Good Cause Process	1	N/A	0.0236	0.0236	160.02
					2.1936	1,363.19

The Combined Quality Control System's Estimated Burden (includes the burdens associated with the Sampling Plan, Arbitration and Good Cause): (Reporting 1,361 + Recordkeeping 2 burden hours) = 1,363 hours.

Dated: April 29, 2010.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2010–10928 Filed 5–7–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Commodity Credit Corporation Information Collection; Noninsured Crop Disaster Assistance Program

AGENCY: Farm Service Agency and Commodity Credit Corporation and, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency and the Commodity Credit Corporation are seeking comments from all interested individuals and organizations on the extension of a currently approved information collection in support of the Noninsured Crop Disaster Assistance Program (NAP). The information collected is needed for producers to determine eligibility to obtain NAP assistance.

DATES: We will consider comments that we receive by July 9, 2010.

ADDRESSES: We invite to submit comments on this notice. In your comments, include date, volume, and page number of this issue of the **Federal Register.** You may submit comments by any of the following methods:

- *Mail:* Candance Thompson, Acting Division Director, Production, Emergencies, and Compliance Division, Farm Service Agency, USDA, Mail Stop, 1400 Independence Avenue, SW., Washington, DC 20250–0522.
- *E–Mail: Candy.Thompson@wdc.usda.gov.*
- *Fax:* 202–690–2130.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Terry Hill, Section Head, Crop Disaster Section, Disaster Assistance Branch, (202) 720–3087.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Noninsured Crop Disaster Assistance Program.

OMB Number: 0560–0175.

Expiration Date: November 30, 2010.

Type of Request: Extension with no revision.

Abstract: The NAP is authorized under 7 U.S.C. Section 7333 and implemented under regulations issued at 7 CFR Part 1437. The NAP is administered under the general supervision of the Executive Vice-President of CCC (who also serves as Administrator, FSA), and is carried out by FSA State and County committees. The information collected allows CCC to provide assistance under NAP for losses of commercial crops or other agricultural commodities (except livestock) for which catastrophic risk protection under 7 U.S.C Section 1508 is not available, and that are produced for food or fiber.

Additionally, NAP provides assistance for losses of floriculture, ornamental nursery, Christmas tree crops, turfgrass sod, seed crops, aquaculture (including ornamental fish), sea oats and sea grass, and industrial crops. The information collected is necessary to determine whether a producer and crop or commodity meet applicable conditions for assistance and to determine compliance with existing rules. Producers must annually: (1) Request NAP coverage by completing an application for coverage and paying a service fee by the CCC-established application closing date; (2) file a current crop-year report of acreage for the covered crop or commodity; and (3) certify production of each covered crop or commodity. When damage to a covered crop or commodity occurs, producers must file a notice of loss with the local FSA administrative county office within 15 calendar days of occurrence or 15 calendar days of the date damage to the crop or commodity becomes apparent. Producers must also file an application for payment and certification of income with the local FSA County office.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 0.6 hours per response.

Type of Respondents: Producers of commercial crops or other agricultural commodities (except livestock).

Estimated Annual Number of Respondents: 291,500.

Estimated Annual Number of Forms Filed per Respondent: 3.

Estimated Total Number of Responses: 2,167,302.

Estimated Total Annual Burden Hours: 2,143,562.

We are requesting comments on all aspects of this information collection and to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden, including the validity of the methodology and assumptions used;

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

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

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the

submission for Office of Management and Budget approval.

Signed at Washington, DC, on May 3, 2010.

Jonathan W. Coppess,

Administrator, Farm Service Agency, and Executive Vice-President, Commodity Credit Corporation.

[FR Doc. 2010–10914 Filed 5–7–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Guaranteed Loan Making and Servicing

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the revision and extension of a currently approved information collection used to administer the Guaranteed Farm Loan Program.

DATES: We will consider comments that we receive by July 9, 2010.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume, and page number, the OMB control number, and the title of the information collection of this issue of the **Federal Register.** You may submit comments by any of the following methods:

- *Mail:* Director, Loan Making Division, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250–0522.
- *E-mail: Trent.Rogers@wdc.usda.gov.*
- *Fax:* (202) 720–1657.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Trent Rogers at the above address.

FOR FURTHER INFORMATION CONTACT: Trent Rogers, Senior Loan Officer, Loan Making Division, Farm Service Agency, (202) 720–3889.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: (7 CFR part 762) Guaranteed Farm Loan Program.

OMB Number: 0560–0155.

Expiration Date of Approval: 10/31/2010.

Type of Request: Extension with revision of a currently approved information collection.

Abstract: This information collection is needed to effectively administer the FSA guaranteed farm loan programs. The information is collected by the FSA loan official in consultation with participating commercial lenders. The objective of the guaranteed loan program is to provide credit to applicants who are unable to obtain credit from lending institutions without a guarantee. The reporting requirements imposed on the public by the regulations at 7 CFR part 762 are necessary to administer the guaranteed loan program in accordance with statutory requirements of the Consolidated Farm and Rural Development Act and are consistent with commonly performed lending practices. Collection of information after loans are made is necessary to protect the Government's financial interest.

Type of Respondents: Individuals or households, business or other for-profit and farms.

Estimated Average Time to Respond: .733 hours.

Estimated Number of Respondents: 16,985.

Estimated Number of Reports Filed per Respondent: 13.5.

Estimated Total Annual Number of Responses: 229,443.

Estimated Total Annual Burden on Respondents: 168,387 hours.

We are requesting comments on all aspects of this information collection and to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used;

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

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

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, on May 3, 2010.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2010–10919 Filed 5–7–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability of Applications (NOFA) for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year (FY) 2010

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the timeframe to submit pre-applications for section 514 Farm Labor Housing (FLH) loans and section 516 FLH grants for the construction of new off-farm FLH units and related facilities for domestic farm laborers. The intended purpose of these loans and grants is to increase the number of available housing units for domestic farm laborers. This notice describes the method used to distribute funds, the application process, and submission requirements.

DATES: The deadline for receipt of all applications in response to this is 5 p.m., local time to the appropriate Rural Development State Office on July 9, 2010. The application closing deadline is firm as to date and hour. Rural Development will not consider any application that is received after the closing deadline unless date and time is extended by another Notice published in the **Federal Register**. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), and postage due applications will not be accepted.

Applicants wishing to apply for assistance must contact the Rural Development State Office serving the State of the proposed off-farm labor housing project in order to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact is under section VII of this Notice.

FOR FURTHER INFORMATION CONTACT: Henry Searcy, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, STOP 0781 (Room 1263–S), USDA Rural Development, 1400 Independence Ave. SW., Washington, DC 20250–0781, *telephone:* (202) 720–1753 (This is not a toll free number.), or via *e-mail: Henry.Searcy@wdc.usda.gov.* If you have questions regarding Net Zero Energy Consumption and Energy Generation please contact Meghan Walsh, National Office Architect, Program Support Staff at (202) 205–9590 or via *e-mail: Meghan.walsh@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The reporting requirements contained in this notice have been approved by the Office of Management and Budget under Control Number 0575–0189.

Overview Information

Federal Agency Name: Rural Development.

Funding Opportunity Title: Notice of Funds Availability (NOFA) for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-Farm Housing for Fiscal Year 2010.

Announcement Type: Initial Notice inviting applications from qualified applicants for Fiscal Year 2010.

Catalog of Federal Domestic Assistance Numbers (CFDA): 10.405 and 10.427.

DATES: The deadline for receipt of all applications in response to this is 5 p.m., local time to the appropriate Rural Development State Office on July 9, 2010. The application closing deadline is firm as to date and hour. Rural Development will not consider any application that is received after the closing deadline unless date and time is extended by another Notice published in the **Federal Register**. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), and postage due applications will not be accepted.

I. Funding Opportunities Description

The funds available for FY 2010 for Off-Farm Labor Housing are: Section 514 $22,128,195, Section 516 $7,552,845 and Rental Assistance $3,400,000.

II. Award Information

Applications for FY 2010 will only be accepted through the date and time listed in this Notice. Since USDA Rural Development has the ability to adjust loan and grant levels, final loan and grant levels will fluctuate, and are subject to the availability of funding.

Individual requests may not exceed $2 million (total loan and grant). No State may receive more than 30 percent of available FLH funding distributed in FY 2010. If there are insufficient applications from around the country to exhaust Section 514–516 funds available, the Agency may then exceed the 30% cap per State. Section 516 off-farm FLH grants may not exceed 90 percent of the total development cost (TDC) of the housing as defined in 7 CFR section 3560.11. Applications that will use leveraged funding must provide written commitments from the funding source at pre-application. If leverage funds are in the form of tax credits, the applicant must document that it has received tax credits or has applied and been approved to receive tax credits.

Rental Assistance and operating assistance will be available for new construction in FY 2010. Operating assistance may be used in lieu of tenant-specific rental assistance (RA) in off-farm labor housing projects that serve migrant farm workers as defined in 7 CFR section 3560.11 that are financed under section 514 or section 516(h) of the Housing Act of 1949, as amended (42 U.S.C. 1484 and 1486(h)) respectively, and otherwise meet the requirements of 7 CFR section 3560.574. Owners of eligible projects may choose tenant-specific RA or operating assistance, or a combination of both; however, any tenant or unit assisted with operating assistance may not also receive RA.

III. Eligibility Information

A. Housing Eligibility

Housing that is constructed with FLH loans and grants must meet Rural Development's design and construction standards contained in 7 CFR part 1924, subparts A and C. Once constructed, off-farm FLH must be managed in accordance with the program's management regulation, 7 CFR part 3560. In addition, off-farm FLH must be operated on a non-profit basis and tenancy must be open to all qualified domestic farm laborers, regardless at which farm they work. Section 514(f)(3) of the Housing Act of 1949, as amended (42 U.S.C. 1484(f)(3)) defines domestic farm laborers to include any person regardless of the person's source of employment, who receives a substantial portion of his or her income from the primary production of agricultural or aquacultural commodities in the unprocessed or processed stage, and also includes the person's family.

B. Tenant Eligibility

Tenant eligibility is limited to persons who meet the definition of a "disabled domestic farm laborer", "a domestic farm laborer", "retired domestic farm laborer," as defined in 7 CFR section 3560.11. Farmworkers who are admitted to this country on a temporary basis under the Temporary Agricultural Workers (H–2A Visa) program are not eligible to occupy section 514/516 off-farm FLH.

C. Applicant Eligibility

(1) To be eligible to receive a section 516 grant for off-farm FLH, the applicant must be a broad-based nonprofit organization, a community organization which can include a faith-based organization, a nonprofit organization of farm workers, a federally recognized Indian tribe, an agency or political subdivision of a State or local government, or a public agency (such as a housing authority). The applicant must be able to contribute at least one-tenth of the TDC non-Rural Development resources which can include leveraged funds.

(2) To be eligible to receive a section 514 loan for off-farm FLH, the applicant must be a broad-based nonprofit organization, a community organization which can include a faith-based organization, a nonprofit organization of farm workers, a federally recognized Indian tribe, an agency or political subdivision of a State or local government, a public agency (such as a housing authority), or a limited partnership which has a nonprofit entity as its general partner, and

(i) be unable to provide the necessary housing from its own resources; and

(ii) except for State or local public agencies and Indian tribes, be unable to obtain similar credit elsewhere at rates that would allow for rents within the payment ability of eligible residents.

(iii) broad-based nonprofit organizations must have a membership that reflects a variety of interests in the area where the housing will be located.

IV. Administrative Requirements

A. Cost Sharing or Matching

Section 516 grants for off-farm FLH may not exceed the lesser of 90 percent of the TDC as provided in 7 CFR 3560.562(c)(1).

B. Other Requirements

The following requirements apply to loans and grants made in response to this notice:

(1) 7 CFR part 1901, subpart E, regarding equal opportunity requirements;

(2) 7 CFR parts 3015, 3016 or 3019 (as applicable), which establishes the uniform administrative requirements for grants and cooperative agreements to State and local governments and to nonprofit organizations;

(3) 7 CFR part 1901, subpart F, regarding historical and archaeological properties;

(4) 7 CFR part 1940, subpart G, regarding environmental assessments;

(5) 7 CFR part 3560, subpart L, regarding the loan and grant authorities of the off-farm FLH program;

(6) 7 CFR part 1924, subpart A, regarding planning and performing construction and other development;

(7) 7 CFR part 1924, subpart C, regarding the planning and performing of site development work;

(8) For construction financed with a Section 516 grant, the provisions of the Davis-Bacon Act (40 U.S.C. 276(a)–276(a)–5) and implementing regulations published at 29 CFR parts 1, 3, and 5; and

(9) All other requirements contained in 7 CFR part 3560, regarding the section 514/516 off-farm FLH program.

V. Application and Submission Information

The application process will be in two phases: the initial pre-application (or proposal) and the submission of a final application. Only those proposals that are selected for funding will be invited to submit final applications. In the event that a proposal is selected for further processing and the applicant declines, the next highest ranked unfunded pre-application may be selected. All pre-applications for sections 514 and 516 funds must be filed with the appropriate Rural Development State Office and must meet the requirements of this notice. Incomplete pre-applications will not be reviewed and will be returned to the applicant. No pre-application will be accepted after 5 p.m., local to the appropriate Rural Development State Office on July 9, 2010 unless date and time is extended by another Notice published in the **Federal Register**.

If a pre-application is accepted for further processing, the applicant must submit a complete, final application, acceptable to Rural Development prior to the obligation of Rural Development funds. If the pre-application is not accepted for further processing the applicant will be notified of appeal rights under 7 CFR part 11.

A. Pre-Application Requirements

(1) The pre-application must contain the following:

(i) A summary page listing the following items. This information should be double-spaced between items and not be in narrative form.

(a) Applicant's name.

(b) Applicant's Taxpayer Identification Number.

(c) Applicant's address.

(d) Applicant's telephone number.

(e) Name of applicant's contact person, telephone number, and address.

(f) Amount of loan and grant requested.

(g) For grants, the applicant's Dun and Bradstreet Data Universal Numbering System (DUNS) number. As required by the Office of Management and Budget (OMB), all grant applicants must provide a DUNS number when applying for Federal grants, on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free number at 1–866–705–5711 or via Internet at *http:www.dnb.com/us/.* Additional information concerning this requirement can be obtained on the Grants.gov Web Site at *http://www.grants.gov.*

(ii) A narrative verifying the applicant's ability to meet the eligibility requirements stated earlier in this notice. If an applicant is selected for further processing Rural Development will require additional documentation as set forth in a Conditional Commitment in order to verify the entity has the legal and financial capability to carry out the obligation of the loan.

(iii) Standard Form 424, "Application for Federal Assistance" can be obtained at *http://www.grants.gov* or from any Rural Development State Office listed in Section VII of this Notice.

(iv) Current (within *6 months*) financial statements with the following paragraph certified by the applicant's designated and legally authorized signer:

> I/we certify the above is a true and accurate reflection of our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part.

(v) Check for $40 from applicants made out to United States Department of Agriculture. This will be used to pay for credit reports obtained by Rural Development.

(vi) Evidence that the applicant is unable to obtain credit from other sources. Letters from credit institutions which normally provide real estate loans in the area should be obtained and these letters should indicate the rates and terms upon which a loan might be provided. (**Note:** Not required from State or local public agencies or Indian tribes.)

(vii) If a FLH grant is desired, a statement concerning the need for a FLH grant. The statement should include preliminary estimates of the rents required with and without a grant.

(viii) A statement of the applicant's experience in operating labor housing or other rental housing. If the applicant's experience is limited, additional information should be provided to indicate how the applicant plans to compensate for this limited experience (*i.e.,* obtaining assistance and advice of a management firm, non-profit group, public agency, or other organization which is experienced in rental management and will be available on a continuous basis).

(ix) A brief statement explaining the applicant's proposed method of operation and management (*i.e.,* on-site manager, contract for management services, *etc.*). As stated earlier in this notice, the housing must be managed in accordance with the program's management regulation, 7 CFR part 3560 and tenancy is limited to "disabled domestic farm laborers," "domestic farm laborers," "retired domestic farm laborers," as defined in 7 CFR section 3560.11.

(x) Applicants must also provide:

(a) A copy of, or an accurate citation to, the special provisions of State law under which they are organized, a copy of the applicant's charter, Articles of Incorporation, and By-laws;

(b) The names, occupations, and addresses of the applicant's members, directors, and officers; and

(c) If a member or subsidiary of another organization, the organization's name, address, and nature of business.

(xi) A preliminary market survey or market study to identify the supply and demand for labor housing in the market area. The market area must be clearly identified and may include only the area from which tenants can reasonably be drawn for the proposed project. Documentation must be provided to justify a need within the intended market area for the housing of "domestic farm laborers", as defined in 7 CFR 3560.11. The documentation must take into account disabled and retired farm waters. The preliminary survey should address or include the following items:

(a) The annual income level of farmworker families in the area and the probable income of the farm workers

who will likely to occupy the proposed housing;

(b) A realistic estimate of the number of farm workers who remain in the area where they harvest and the number of farm workers who normally migrate into the area. Information on migratory workers should indicate the average number of months the migrants reside in the area and an indication of what type of family groups are represented by the migrants *(i.e.,* single individuals as opposed to families);

(c) General information concerning the type of labor intensive crops grown in the area and prospects for continued demand for farm laborers;

(d) The overall occupancy rate for comparable rental units in the area and the rents charged and customary rental practices for these units (*i.e.,* will they rent to large families, do they require annual leases, *etc.*);

(e) The number, condition, adequacy, rental rates and ownership of units currently used or available to farm workers;

(f) A description of the units proposed, including the number, type, size, rental rates, amenities such as carpets and drapes, related facilities such as a laundry room or community room and other facilities providing supportive services in connection with the housing and the needs of the prospective tenants such as a health clinic or day care facility, estimated development timeline, estimated total development cost, and applicant contribution; and

(g) The applicant must also identify all other sources of funds, including the dollar amount, source, and commitment status. (**Note:** A section 516 grant may not exceed 90 percent of the total development cost of the housing.)

(xii) The following forms are required:

(a) A completed Form RD 1940–20, "Request for Environmental Information," and a description of anticipated environmental issues or concerns. The form can be found at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1940–20.PDF.*

(b) A prepared HUD Form 935.2A, "Affirmative Fair Housing Marketing Plan (AFHM) Multi-family Housing" in accordance with 7 CFR 1901.203(c). The plan will reflect that occupancy is open to all qualified "domestic farm laborers," regardless of which farming operation they work and that they will not discriminate on the basis of race, color, sex, age, disability, marital or familial status or National origin in regard to the occupancy or use of the units. The form can be found at *http://www.hud.gov/offices/adm/hudclips/forms/files/935–2a.pdf*

(c) A proposed operating budget utilizing Form RD 3560–7, "Multiple Family Housing Project Budget/Utility Allowance," can be found at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560–7.PDF.*

(d) An estimate of development cost utilizing Form RD 1924–13, "Estimate and Certificate of Actual Cost," can be found at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD1924–13.PDF.*

(e) Form RD 3560–30, "Certification of no Identity of Interest (IOI)," can be found at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560–30.PDF* and Form RD 3560–31, "Identity of Interest Disclosure/Qualification Certification," can be found at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560–31.PDF.*

(f) Form HUD 2530, "Previous Participation Certification," can be found at *http://www.hud.gov/offices/adm/hudclips/forms/files/2530.pdf.*

(g) If requesting RA or Operating Assistance, Form RD 3560–25, "Initial Request for Rental Assistance or Operating Assistance." can be found at *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD3560–25.PDF.*

(h) Form RD 400–4, "Assurance Agreement," can be found at: *http://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/RD400–4.PDF.* Applications for revitalization, repair and rehab are to apply through the Multi-Family Housing Revitalization Demonstration Program.

(i) Evidence of compliance with Executive Order 12372. The applicant must send a copy of Form SF–424 to the applicant's state clearinghouse for intergovernmental review. If the applicant is located in a state that does not have a clearing house, the applicant is not required to submit the form.

(xiii) Evidence of site control, such as an option contract or sales contract. In addition, a map and description of the proposed site, including the availability of water, sewer, and utilities and the proximity to community facilities and services such as shopping, schools, transportation, doctors, dentists, and hospitals.

(xiv) Preliminary plans and specifications, including plot plans, building layouts, and type of construction and materials. The housing must meet Rural Development's design and construction standards contained in 7 CFR part 1924, subparts A and C and must also meet all applicable Federal, State, and local accessibility standards.

(xv) A supportive services plan, which describes services that will be provided on-site or made available to tenants through cooperative agreements with service providers in the community, such as a health clinic or day care facility. Off-site services must be accessible and affordable to farm workers and their families. Letters of intent from service providers are acceptable documentation at the pre-application stage.

(xvi) A sources and uses statement which shows all sources of funding included in the proposed project. The terms and schedules of all sources included in the project should be included in the sources and uses statement.

(xvii) A separate one-page information sheet listing each of the "Pre-Application Scoring Criteria" contained in this notice, followed by a reference to the page numbers of all relevant material and documentation that is contained in the proposal that supports the criteria.

(xviii) Applicants are encouraged, but not required, to include a checklist of all of the pre-application requirements and to have their pre-application indexed and tabbed to facilitate the review process;

(xix) Evidence of compliance with the requirements of the applicable State Housing Preservation Office (SHPO). A letter from the SHPO where the off-farm labor housing project is located, signed by their designee will serve as evidence of compliance.

V. Pre-Application Review Information

All applications for sections 514 and 516 funds must be filed with the appropriate Rural Development State Office and must meet the requirements of this notice. The Rural Development State Office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the pre-application.

A. *Selection Criteria.* Section 514 loan funds and section 516 grant funds will be distributed to States based on a national competition, as follows:

(1) Rural Development States will accept, review, and score pre-applications in accordance with this notice. The scoring factors are:

(i) The presence of construction cost savings, including donated land and construction leverage assistance, for the units that will serve program-eligible tenants. The savings will be calculated as a percentage of the Rural Development TDC. The percentage calculation excludes any costs prohibited by Rural Development as

loan expenses, such as a developer's fee. Construction cost savings includes, but is not limited to, funds for hard construction costs, and State or Federal funds which are applicable to construction costs. A minimum of ten percent cost savings is required to earn points; however, if the total percentage of cost savings is less than ten percent and the proposal includes donated land, two points will be awarded for the donated land. To count as cost savings for purposes of the selection criteria, a written commitment from the funding source must be submitted with the pre-application. Points will be awarded in accordance with the following table using rounding to the nearest whole number.

Percentage	Points
75 or more	20
70–74	19
65–69	18
60–64	17
50–54	15
45–49	14
40–44	13
35–39	12
30–34	11
25–29	10
20–24	9
10–14	7
5–9	6
0–4	0

Donated land in proposals with less than ten percent total cost savings: 2 points.

(ii) The presence of operational cost savings, such as tax abatements, non-Rural Development tenant subsidies or donated services are calculated on a per-unit cost savings for the sum of the savings. Savings must be available for at least 5 years and documentation must be provided with the application demonstrating the availability of savings for 5 years. To calculate the savings, take the total amount of savings and divide it by the number of units in the project that will benefit from the savings to obtain the per unit cost savings. For non-Rural Development tenant subsidy, if the value changes during the five year calculation, the applicant must use the lower of the non-rural development tenant subsidy to calculate per unit cost savings. For example, a 10 unit property with 100 percent designated farm labor housing units receiving $20,000 per year non-rural development subsidy yields a cost savings of $100,000 ($20,000*5 years); resulting to a $10,000 per-unit cost savings ($100,000/10 units).

To determine cost savings in a mixed income complex that will serve other income levels than farm labor housing income-eligible tenants, use only the number of units that will serve farm labor housing income-eligible tenants. Round percentages to the nearest whole number, rounding up at 0.50 and above and down at 0.49 and below.

Use the following table to apply points.

Per-Unit Cost Savings	Points
$15,000 and above	20
$10,001–$15,000	18
$7,501–$10,000	16
$5,001–$7,500	12
$3,501–$5,000	10
$2,001–$3,500	8
$1,000 –$2,000	5

(iii) Percent of units for seasonal, temporary, migrant housing. (five points for up to and including 50 percent of the units; 10 points for 51 percent or more units used for seasonal, temporary, or migrant housing.)

(iv) Presence of tenant services.

(a) Up to 10 points will be awarded based on the presence of and extent to which a tenant services plan exists that clearly outlines services that will be provided to the residents of the proposed project. These services may include, but are not limited to, transportation related services, on-site English as a Second Language (ESL) classes, move-in funds, emergency assistance funds, homeownership counseling, food pantries, after school tutoring, and computer learning centers.

(b) Two points will be awarded for each resident service included in the tenant services plan up to a maximum of 10 points. Plans must detail how the services are to be administered, who will administer them, and where they will be administered. All tenant service plans must include letters of intent that clearly state the service that will be provided at the project for the benefit of the residents from any party administering each service, including the applicant.

(v) *Net Zero Energy Consumption.* In an effort to implement USDA's nationwide initiative to promote sustainable building development, energy-efficiency and conservation, USDA Rural Development has adopted a goal that all new multi-family housing projects financed in whole or in part by the USDA, will achieve net zero energy consumption—it will consume no more energy than it produces. Program participation points will be awarded as follows:

(a) Participation in a System Third-Party Measured and Verified Sustainable Development and Energy-Efficiency program. The points will be allocated as follows: (maximum 20 points).

(*1*) Participate in the Department of Energy's Energy Star for Homes program: *http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.nh_multifamily_units* (1 point);

(*2*) Participate in the Department of Energy's Builder's Challenge program: *http://www1.eere.energy.gov/buildings/challenge/about.html.* (3 points);

(*3*) Participation in the following programs will be awarded 3 points for each program with a maximum of 9 points:

- Green Communities program by the Enterprise Community Partners *(http://www.enterprisecommunity.org)*;
- LEED for Homes program by the United States Green Building Council (USGBC) *(http://www.usgbc.org)*; and
- The National Association of Home Builders (NAHB) ICC 700–2008 National Green Building Standard™ (*http://www.nahb.org*).

(*4*) Participation in higher certification levels. LEED for Homes and ICC 700–2008 National Green Building Standard™ each have four levels of increasingly challenging certification. For specific information on the different levels for these programs please refer to their websites listed above. Projects will receive an additional (1) point for each higher certification level commitment beyond the baseline of the program. (6 Points maximum)

(*5*) Participate in local green/energy efficient building standards. Applicants who participate in a city, county or municipality program, will receive an additional (1) point. Points will be awarded only if the applicant is cross-enrolled with a national program described under section VI.A.(1).

The applicant should be aware that most of the following requirements are embedded in the third party programs rating and verification systems; the applicant should look at the requirements for each program for specific details:

- Team of qualified professionals in design and construction of sustainable buildings;
- Initial design meeting, ongoing third party verification and post-construction operations & maintenance education;
- Tight building envelope with indoor air quality assurance;
- Program for education of tenants and property managers in operations and maintenance.

(vi) *Energy Generation.* To reach USDA's goal of net zero energy consumption, it is essential to generate renewable energy on site which will compliment a weather tight, well-insulated building envelope with highly efficient mechanical systems. Possible

renewable energy generation technologies include: Wind turbines and micro-turbines, micro-hydro power, photovoltaics, solar hot water systems, and biomass/biofuel systems that do not use fossil fuels in production. Geo-exchange systems are highly encouraged as they lessen the total demand for energy and, if supplemented with other renewable energy sources, can achieve zero energy consumption more easily. Energy analysis of preliminary building plans using industry recognized simulation software should document the projected energy consumption of the building, the portion of building consumption which will be satisfied through on-site generation, and the building's HERS (Home Energy Rating System) score. In order to receive points under this section the energy analysis will need to be submitted with the application. Points under this section will be awarded as follows:

(a) New multi-family housing projects, whose preliminary building plans project it will consume no more energy than it produces. (10 Points)

(b) Projects whose preliminary building plans project they will have less than a one hundred percent energy generation commitment (where generation is considered to be the total amount of energy needed to be generated on-site to make the building a net-zero consumer of energy), will be awarded points corresponding to their percent of commitment (ex. 80% commitment to energy generation = 8 points or 80 percent of 10 points).

(2) The National Office will rank all pre-applications nationwide and distribute funds to States in rank order, within funding and RA limits. A lottery in accordance with 7 CFR 3560.56(c)(2) will be used for applications with tied point scores when they all cannot be funded. If insufficient funds or RA remain for the next ranked proposal, that applicant will be given a chance to modify their pre-application to bring it within remaining funding levels. This will be repeated for each next ranked eligible proposal until an award can be made or the list is exhausted. Rural Development will notify all applicants whether their applications have been accepted or rejected.

VI. Award Administration Information

1. Award Notices

Loan applicants must submit their initial applications by the due date specified in this Notice. State Offices will review applications and provide a list to the National Office. Once the applications have been scored and ranked by the National Office the National Office will advise States Offices of the proposals selected for further processing, State Offices will respond to applicants by letter.

If the application is not accepted for further processing, the applicant will be notified of appeal rights under 7 CFR part 11.

2. Administrative and National Policy

All Farm Labor Housing loans and grants are subject to the restrictive-use provisions contained in 7 CFR section 3560.72(a)(2).

3. Reporting

Borrowers must maintain separate financial records for the operation and maintenance of the project and for tenant services. Tenant services will not be funded by Rural Development. Funds allocated to the operation and maintenance of the project may not be used to supplement the cost of tenant services, nor may tenant service funds be used to supplement the project operation and maintenance. Detailed financial reports regarding tenant services will not be required unless specifically requested by Rural Development, and then only to the extent necessary for Rural Development and the borrower to discuss the affordability (and competitiveness) of the service provided to the tenant. The project audit, or verification of accounts on Form RD 3560–10, "Borrower Balance Sheet", together with an accompanying Form RD 3560–7 "Multiple Family Housing Project Budget Utility Allowance" showing actuals, must allocate revenue and expense between project operations and the service component.

VII. Agency Contacts

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3618 TDD (334) 279–3495, Van McCloud.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7740, TDD (907) 761–8905, Deborah Davis.

Arizona State Office, Phoenix Courthouse and Federal Building, 230 North First Ave., Suite 206, Phoenix, AZ 85003–1706, (602) 280–8768, TDD (602) 280–8706, Carol Torres.

Arkansas State Office, 700 W. Capitol Ave., Room 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3063, Greg Kemper.

California State Office, 430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5821, TDD (530) 792–5848, Debra Moretton.

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544–2923, TDD (800) 659–2656, Mary Summerfield.

Connecticut, Served by Massachusetts State Office.

Delaware and Maryland State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3615, TDD (302) 857–3585, Pat Baker.

Florida & Virgin Islands State Office, 4440 NW. 25th Place, Gainesville, FL 32606–6563, (352) 338–3465, TDD (352) 338–3499, Tresca Clemmons.

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers.

Hawaii State Office, (Services all Hawaii, American Samoa Guam, and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8305, TDD (808) 933–8321, Donald Estes.

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5630, TDD (208) 378–5644, Roni Atkins.

Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6222, TDD (217) 403–6240, Barry L. Ramsey.

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 423), TDD (317) 290–3343, Paul Neumann.

Iowa State Office, 210 Walnut Street Room 873, Des Moines, IA 50309, (515) 284–4493, TDD (515) 284–4858, Heather Honkomp.

Kansas State Office, 1303 SW. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2721, TDD (785) 271–2767, Mike Resnik.

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7325, TDD (859) 224–7422, Paul Higgins.

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson.

Maine State Office, 967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9110, TDD (207) 942–7331, Bob Nadeau.

Maryland, Served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street Amherst, MA 01002, (413) 253–4333, TDD (413) 253–4590, Arlene Nunes.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Julie Putnam.

Minnesota State Office, 375 Jackson Street Building, Suite 410, St. Paul, MN 55101–1853, (651) 602–7812, TDD (651) 602–7830, Nancy Schmidt.

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Darnella Smith-Murray.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0987, TDD (573) 876–9480, Rachelle Long.

Montana State Office, 900 Technology Blvd. Suite B, Bozeman, MT 59718, (406) 585–2515, TDD (406) 585–2562, Deborah Chorlton.

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln,

NE 68508, (402) 437–5734, TDD (402) 437–5093, Linda Anders.
Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–5146, (775) 887–1222 (ext. 25), TDD (775) 885–0633, William Brewer.
New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6050, TDD (603) 229–0536, Robert McCarthy.
New Jersey State Office, 5th Floor North Suite 500, 8000 Midlantic Dr., Mt. Laurel, NJ 08054, (856) 787–7740, TDD (856) 787–7784, George Hyatt, Jr.
New Mexico State Office, 6200 Jefferson St., NE., Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Susan Gauna.
New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357 5th Floor, Syracuse, NY 13202, (315) 477–6421, TDD (315) 477–6421, Michael Bosak.
North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2066, TDD (919) 873–2003, Beverly Casey.
North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737 Bismarck, ND 58502, (701) 530–2049, TDD (701) 530–2113, Kathy Lake.
Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2409, TDD (614) 255–2554, Cathy Simmons.
Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Ivan S. Graves.
Oregon State Office, 1201 NE Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414–3325, TDD (503) 414–3387, Sherryl Gleason.
Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Martha Eberhart.
Puerto Rico State Office, 654 Munoz Rivera Avenue, IBM Plaza, Suite 601, Hato Rey, PR 00918, (787) 766–5095 (ext. 249), TDD (787) 766–5332, Lourdes Colon.
Rhode Island, Served by Massachusetts State Office.
South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd.
South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Roger Hazuka or Pam Reilly.
Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, TDD (615) 783–1397, Don Harris.
Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9765, TDD (254) 742–9712, Scooter Brockette.
Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4325, TDD (801) 524–3309, Janice Kocher.
Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6021, TDD (802) 223–6365, Heidi Setien.
Virgin Islands, Served by Florida State Office.
Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1596, TDD (804) 287–1753, CJ Michels.
Washington State Office, 1835 Black Lake Blvd., Suite B, Olympia, WA 98512, (360) 704–7730, TDD (360) 704–7760, Susan McKitrick.
Western Pacific Territories, Served by Hawaii State Office.
West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4872, TDD (304) 284–4836, David Cain.
Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7676, TDD (715) 345–7614, Cheryl Halverson.
Wyoming State Office, P.O. Box 11005, Casper, WY 82602, (307) 233–6715, TDD (307) 233–6733, Alan Brooks.

VIII. Non-Discrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider and employer.

May 4, 2010.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2010–10927 Filed 5–7–10; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Docket 31–2010

Foreign–Trade Zone 26 Atlanta, Georgia, Application for Subzone, Yates Bleachery Company (Textile Fabric Finishing), Flintstone, Georgia

An application has been submitted to the Foreign–Trade Zones Board (the Board) by Georgia Foreign–Trade Zone, Inc., grantee of FTZ 26, requesting special–purpose subzone status for the textile fabric finishing facility of Yates Bleachery Company (YBC) located in Flintstone, Georgia. The application was submitted pursuant to the provisions of the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 3, 2010.

The proposed subzone would be comprised of YBC's plant (160 employees/254 acres) located at 503 Flintstone Road in Flintstone, Georgia. The facility is used to finish up to 200 million square yards of foreign–origin, greige fabric annually on a contract basis for the Louisville Bedding Company, which has concurrently submitted an application to the Board for subzone status for its Louisville, Kentucky facility. The application indicates that YBC would clean, bleach, wash, stretch, dry, and sanforize wide–roll (80 inches and wider), high thread count (180 threads per inch and higher) fabrics under FTZ procedures based on a tolling arrangement with Louisville Bedding Company. The finished fabric would be transferred via zone–to-zone transfer to the proposed subzone to be located at the Louisville Bedding Company facility. YBC would not process any other customer–owned fabric under FTZ procedures.

Subzone status would allow for deferral of duties on the customer–owned, foreign fabric while inventoried in the proposed subzone. Subzone status would further allow YBC to realize certain CBP–related logistical benefits. Customs duties could possibly be deferred or reduced on foreign status production equipment. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Pierre Duy of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002. The closing period for receipt of comments is July 9, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 26, 2010.

A copy of the application will be available for public inspection at the

Office of the Foreign–Trade Zones Board's Executive Secretary at the address listed above and in the "Reading Room" section of the Board's website, which is accessible via www.trade.gov/ftz. For further information, contact Pierre Duy at Pierre.Duy@trade.gov or (202) 482–1378.

Dated: May 3, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–10992 Filed 5–7–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XS00

Endangered and Threatened Species; Recovery Plans; Recovery Plan for the Kemp's Ridley Sea Turtle

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service (USFWS), Interior.

ACTION: Extension of public comment period.

SUMMARY: On March 16, 2010, we, NMFS and USFWS, announced the availability for public review of the draft Bi-National Recovery Plan (Plan) for the Kemp's Ridley Sea Turtle (Lepidochelys kempii). The Kemp's Ridley Recovery Plan is a bi-national plan developed by the NMFS and USFWS and the Secretary of Environment and Natural Resources, Mexico. We provided a 60-day comment period, ending May 17, 2010, on the draft Plan. We received requests for extension of the public comment period. In response, we are extending the comment period for the draft Plan an additional 45 days.

DATES: Information and comments on the draft Plan must be received by close of business on July 1, 2010.

ADDRESSES: Send comments by any one of the following methods:

(1) Electronic Submissions: Submit all electronic comments via the Federal eRulemaking Portal *http://www.regulations.gov*.

(2) Mail: NMFS Deputy Chief, Endangered Species Division, Attn: Draft Bi-National Kemp's Ridley Recovery Plan, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13535, Silver Spring, MD 20910

(3) Fax: 301-713-0376, Attn: NMFS Deputy Chief, Endangered Species Division

FOR FURTHER INFORMATION CONTACT: Therese Conant (ph. 301–713–1401, fax 301–713–0376) or Tom Shearer (ph. 361–994–9005, fax 361–994–8626).

SUPPLEMENTARY INFORMATION:

Availability of the Draft Recovery Plan

Interested persons may obtain the Plan for review on the Internet at *http://www.nmfs.noaa.gov/pr/recovery/plans.htm or http://www.fws.gov/kempsridley/* or by contacting Therese Conant or Tom Shearer (see **FOR FURTHER INFORMATION CONTACT**).

Background

On March 16, 2010, we published a Notice of Availability of the draft Plan for public review and comment (75 FR 12496). This Plan discusses the natural history, current status, and the known and potential threats to the Kemp's ridley. The Plan lays out a recovery strategy to address the potential threats based on the best available science and includes recovery goals and criteria. The Plan is not a regulatory action, but presents guidance for use by agencies and interested parties to assist in the recovery of loggerhead turtles. The Plan identifies substantive actions needed to achieve recovery by addressing the threats to the species. We received requests to extend the public comment period. In response to these requests, we are extending the comment period for an additional 45 days, ending July 1, 2010.

Authority: 16 U.S.C. 1531 et seq.

Dated: May 5, 2010.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–11017 Filed 5–7–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–892]

Carbazole Violet Pigment 23 from the People's Republic of China: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 10, 2010.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION: On December 29, 2009, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on carbazole violet pigment 23 (CVP 23) from the People's Republic of China for the period December 1, 2007 through November 30, 2008. *See Carbazole Violet Pigment 23 From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 68780 (December 29, 2009) (*Preliminary Results*). The final results of this administrative review were originally due no later than April 28, 2010. As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, the deadline for issuing the final results of this administrative review has been extended by seven days, until May 5, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results up to 180 days after the date on which the preliminary results are published.

The Department finds that it is not practicable to complete this review by May 5, 2010 because the Department requires additional time to consider issues related to surrogate valuation. Consequently, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the final results of this administrative review by 45 days to June 19, 2010. As this date falls on a Saturday, the final results will be due on the next business day, which is June

21, 2010. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 4, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–10993 Filed 5–7–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–816]

Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Victoria Cho, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; *telephone:* (202) 482–5075.

Background

On September 22, 2009, the U.S. Department of Commerce ("Department") published a notice of initiation of the administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from the Republic of Korea, covering the period August 1, 2008 to July 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 48224 (September 22, 2009). The preliminary results of this review were due no later than May 3, 2010. As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this review is now May 10, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines as a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires that the Department make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results to up to 365 days.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable. Additional time is needed to gather and analyze a significant amount of information pertaining to sales practices, manufacturing costs and corporate relationships pertaining to each company participating in the review. Given the number and complexity of issues in this case, and in accordance with section 751(a)(3)(A) of the Act, we are fully extending the time period for issuing the preliminary results of review. Therefore, the preliminary results are now due no later than September 7, 2010. The final results continue to be due 120 days after publication of the preliminary results.

This notice is published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: April 30, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–11018 Filed 5–7–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836]

Light–Walled Rectangular Pipe and Tube from Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 10, 2010.

FOR FURTHER INFORMATION CONTACT: Brian Davis (Regiomontana) or Ericka Ukrow (Maquilacero), AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7924 or (202) 482–0405, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 2009, the Department of Commerce (the Department) published in the **Federal Register** the initiation of administrative review of the antidumping duty order on light–walled rectangular pipe and tube from Mexico, covering the period of January 30, 2008, to July 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 48224 (September 22, 2009). The current deadline for the preliminary results of this review is May 10, 2010.[1]

Extension of Time Limits for Preliminary Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires that the Department complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order for which a review is requested.

The Department finds that it is not practicable to complete the preliminary results of this review within the original time frame because additional information from both mandatory respondents, Regiomontana S.A. de C.V. (Regiomontana) and Maquilacero S.A. de C.V. (Maquilacero), is necessary to complete our analysis. Additionally, we intend to conduct sales and cost verifications of Regiomontana's

[1] As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the federal government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the preliminary results of this review is now May 10, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

responses and release our verification reports prior to issuance of the preliminary results. Because the Department requires additional time to address the above, it is not practicable to complete this review within the original time limit (*i.e.*, May 10, 2010). Accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review by 120 days (*i.e.*, September 7, 2010), in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2). We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: May 4, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–11021 Filed 5–7–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 100504211–0211–01]

Notice of a Grant With the Public Broadcasting Service

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of a grant to the Public Broadcasting Service.

SUMMARY: The National Telecommunications and Information Administration (NTIA) announces its intent to award a grant to the Public Broadcasting Service (PBS), a private, nonprofit corporation whose members are America's public television stations. The PBS mission is to acquire and distribute quality children's, cultural, educational, history, nature, news, public affairs and science television programming and related services to 356 noncommercial stations serving all 50 states and the U.S. territories through a satellite interconnection system. This grant will support development of the Commercial Mobile Alert System (CMAS), a national system to distribute emergency alert messages to the American public via commercial mobile service (CMS) devices (*e.g.,* cellular telephones).

FOR FURTHER INFORMATION CONTACT: William Cooperman, Director, Public Broadcasting Division, *telephone:* (202) 482–5802; *Fax:* (202) 482–2156; *e-mail: wcooperman@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Authority: Section 3010 of the Deficit Reduction Act of 2005, Public Law 109–171, 120 Stat. 4, 26–27 (Feb. 8, 2006) (establishing the National Alert and Tsunami Warning Program); Section 606 of the SAFE Port Act, Public Law 109–347, 120 Stat. 1884, 1941 (Oct. 13, 2006) (directing NTIA to compensate public television station licensees or permittees for reasonable costs incurred in complying with the requirements to support the distribution of geographically targeted alerts by commercial mobile service providers).

Background

Section 3010 of the Deficit Reduction Act of 2005 directed NTIA to establish a National Alert and Tsunami Warning Program and provided up to $156 million during fiscal years 2007 through 2012 from the Digital Television Transition and Public Safety Act fund to pay for this effort. NTIA was directed to implement a unified national alert system capable of alerting the public, on a national, regional, or local basis to emergency situations by using a variety of communications technologies.

Congress subsequently enacted the WARN Act, Title VI of the SAFE Port Act, directing NTIA's expenditure of some of the funds provided under Section 3010 of the Deficit Reduction Act. The WARN Act set forth requirements to enable alerting capability for commercial mobile service providers that voluntarily elect to transmit emergency alerts as part of a national emergency alerting system. NTIA was directed to fund certain aspects of those activities in section 606 of the WARN Act, including compensating public television broadcasters for their reasonable costs to comply with the requirements imposed by section 602(c) of the WARN Act. Section 602(c) directed the Federal Communications Commission (FCC) to adopt regulations to require public television broadcasters to install necessary equipment and technologies on, or as part of, any broadcast television digital signal transmitter to enable the distribution of geographically targeted alerts by commercial mobile service providers that have elected to transmit emergency alerts.

On July 8, 2008, the FCC adopted rules requiring public television stations to install equipment and technologies to enable them to distribute geo-targeted emergency alerts to participating CMS providers. *See* The Commercial Mobile Alert System, Second Report and Order and Further Notice of Proposed Rulemaking (Second Report), PS Dkt. No. 07–087, 23 F.C.C. Rcd. 10765 (July 8, 2008). The Second Report specified the functionality that must be built at the nation's public television stations and at a central collector to permit the public broadcasting system to provide a redundant pathway as one part of a national alerting system. The Second Report identified five types of equipment (Geo-targeting Systems, Groomers, Data Receivers, PBS Equipment, and Back-up Power Equipment) recommended by the Association of Public Television Stations (APTS) for this purpose. The Second Report also acknowledged that PBS or a similarly situated entity would provide the interface feed between the Alert Gateway, the national emergency message aggregator through which emergency messages would be disseminated, and the public broadcast television stations.

NTIA received an unsolicited proposal from PBS, which seeks funding on behalf of all affected public television stations as well as for elements of CMAS to be performed by PBS. APTS, an organization representing America's public television stations, has endorsed the proposal. The PBS proposal included the elements supported by APTS in its FCC filings and discussed by the FCC in the Second Report. NTIA has reviewed the PBS proposal pursuant to Department of Commerce policy and intends to award PBS a non-competitive grant under the authority of the Deficit Reduction Act of 2005 and the WARN Act to cover the costs of equipment necessary for public television stations to install equipment and systems to comply with the FCC requirements of the Second Report. PBS is uniquely qualified and best able to administer this award because it manages the national public television interconnection system, which will be the redundant pathway used by the public television stations for this national emergency alerting system; it has the demonstrated ability to work collaboratively with the public television stations to implement the project in the limited timeframe required by the FCC; and its management has the technical skills to implement and administer the project.

Dated: May 4, 2010.

Bernadette McGuire-Rivera,

Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 2010–10923 Filed 5–7–10; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW35

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Squid, Mackerel, and Butterfish Committee will hold a public meeting that also includes the Squid, Mackerel, and Butterfish Advisory Panel as well as the Amendment 11 Fishery Management Action Team (FMAT).

DATES: The meeting will be held on Wednesday, May 26, 2010, from 10 a.m. to 6 p.m.

ADDRESSES: The meeting will be held at the Courtyard Baltimore BWI Airport Hotel, 1671 West Nursery Road, Linthicum, MD 21090; telephone: (410) 859–8855.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to address outstanding issues within Amendment 11 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. At the April 2010 MAFMC Council meeting, the SMB Committee requested that the Amendment 11 Fishery Management Action Team (FMAT), the SMB Advisory Panel, and the SMB Committee meet regarding mackerel limited access to resolve ongoing historical participation issues. These participation issues led the Committee to recommend delaying adoption of Amendment 11's alternatives regarding mackerel limited access. The Committee will recommend further action pending the results of the May 26, 2010 meeting and the Council may take action on Amendment 11 at its June 2010 Council meeting in New York, NY.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: May 5, 2010.

Tracey L. Thompson,

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

[FR Doc. 2010–10966 Filed 5–7–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT64

Notice of Public Review and Comment Period on NOAA's Arctic Vision and Strategy

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Request for comments.

SUMMARY: The Arctic has profound significance for climate and functioning of ecosystems around the globe. The region is particularly vulnerable and prone to rapid change. Increasing air and ocean temperatures, thawing permafrost, loss of sea ice, and shifts in ecosystems are evidence of widespread and dramatic ongoing change. As a result, critical environmental, economic, and national security issues are emerging, many of which have significant impacts for human lives, livelihoods, and coastal communities. Though NOAA has numerous and diverse capabilities that support these emerging issues, a strategic approach that leverages NOAA's existing priorities and strengths, as well as those of our national and international partners, is needed. This document provides a high-level framework and six strategic goals to address NOAA's highest priorities in the region. It is based upon assumptions that the region will: continue to experience dramatic change; become more accessible to human activities; and, be a focus of increasing global strategic interest.

DATES: Comments must be submitted by June 10, 2010.

ADDRESSES: Submit comments by one of the following methods–

- Electronic Submissions: strategic.planning@noaa.gov
- Mail: National Oceanic and Atmospheric Administration, Office of Program Planning and Integration, 1315 East-West Highway, Room 15749, Silver Spring, Maryland 20910

FOR FURTHER INFORMATION CONTACT: Tracy Rouleau, Office of Program Planning and Integration, at *strategic.planning@noaa.gov* or (301) 713–1622 x187.

SUPPLEMENTARY INFORMATION: To view the document, go to *http://www.arctic.noaa.gov/*.

I. Summary of the Strategy

NOAA envisions an Arctic where decisions and actions related to conservation, management, and use are based on sound science and support healthy, productive, and resilient communities and ecosystems. The agency seeks a future where the global implications of Arctic change are better understood and predicted.

NOAA will focus its efforts on the following six priority goals needed to realize this vision:

(1) Forecast Sea Ice
(2) Strengthen Foundational Science to Understand and Detect Arctic Climate and Ecosystem Changes
(3) Improve Weather and Water Forecasts and Warning
(4) Enhance International and National Partnerships
(5) Improve Stewardship and Management of Ocean and Coastal Resources in the Arctic
(6) Advance Resilient and Healthy Arctic Communities and Economies

These goals were selected because they represent areas where NOAA can address urgent and timely issues that meet two key criteria: providing the information, knowledge, and policies to meet NOAA mandates and stewardship responsibilities, and providing the information, knowledge, and services to enable others to live and operate safely in the Arctic.

Each goal also fulfills international goals and establishes, enhances, or leverages partnerships with other Arctic nations, international organizations, government agencies, and non-governmental organizations, academia, and local communities. The goals are also geared towards generating large societal benefits relative to the resources required and strengthening NOAA's

engagement, politically, scientifically, internationally, and publicly.

NOAA will next develop and execute a five-year Arctic Action Plan to achieve these goals. Development and execution of the plan will require coordination across all NOAA Line and Staff Offices and collaboration with local, regional, federal, nongovernmental, and academic partners. As a starting point, NOAA will establish a single point of contact within NOAA Senior Executive Leadership who will be accountable for achieving the Arctic goals. The Arctic Action Plan will also include an engagement strategy for reaching internal and external employees, partners, and stakeholders, as well as a detailed budget strategy. NOAA is committed to enhancing its current involvement in research and management programs in the Arctic, and anticipates an initial investment of $10 million towards the implementation of this strategy, recognizing that additional funds will be needed to achieve the goals.

II. Request for Comments

NOAA invites comments on its: (a) vision for the Arctic; and (b) six strategic goals and five-year strategies for the Arctic.

Dated: May 4, 2010.

Paul N. Doremus,

Director of Strategic Planning, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–11016 Filed 5–7–10; 8:45 am]

BILLING CODE 3510–NW–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; National Security Education Board Members Meeting

AGENCY: Under Secretary of Defense Personnel and Readiness, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given that the National Security Education Board will meet on June 23, 2010. The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

DATES: The meeting will be held on June 23, 2010, from 8 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held at the National Security Education Program; 1101 Wilson Blvd., Suite 1210; Rosslyn, VA 22219.

FOR FURTHER INFORMATION CONTACT: Dr. Kevin Gormley, Program Officer, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *Kevin.gormley@wso.whs.mil.*

SUPPLEMENTARY INFORMATION: The National Security Education Board Members meeting is open to the public. The public is afforded the opportunity to submit written statements associated with NSEP.

Dated: May 4, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10938 Filed 5–7–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Class Deviation From FAR 52.219–7, Notice of Partial Small Business Set-Aside

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

SUMMARY: This is to notify interested parties of a proposed class deviation to the Federal Acquisition Regulation (FAR) regarding partial small business set-asides for Defense Logistics Agency (DLA), Defense Energy Support Center (DESC) bulk fuels solicitations and resulting contract awards. DLA is requesting Department of Defense approval of a class deviation to FAR 52.219–7, to revise an existing class deviation to that clause.

DATES: Comments must be received on or before July 9, 2010.

ADDRESSES: Submit your comments concerning this Deviation to DLA, Attn: J–71 (Kerry Pilz), 8725 John J. Kingman Rd, Fort Belvoir, VA 22060–6221. Telephone (703) 767–1461 or E-mail at *kerry.pilz@dla.mil.*

FOR FURTHER INFORMATION CONTACT: Kerry Pilz, (703) 767–1461 or e-mail at *kerry.pilz@dla.mil.*

SUPPLEMENTARY INFORMATION: In accordance with Federal Acquisition Regulation (FAR) 1.404 and Defense Federal Acquisition Regulation Supplement 201.404, DESC is requesting a class deviation from FAR Clause 52.219–7, Notice of Partial Small Business Set-Aside. DESC intends to use the clause in domestic bulk fuel solicitations.

Under the bulk petroleum program, DESC purchases, distributes, and manages millions of gallons of military specification fuel products for the Military Services. Domestic bulk fuel solicitations generally contain partial small business set-asides pursuant to FAR subpart 19.5. These set-asides are solicited and awarded using the current deviation clause, DESC Clause I237.06, Notice of Partial Small Business Set-Aside (Deviation). The current deviation was approved on June 25, 1990, pursuant to DAR Case 90–922. The current deviation established a methodology for partial small business set-aside evaluation and awards.

DESC proposes revisions to the current deviation clause to clarify language in various portions of the clause, and in particular to clarify that a small business will not be awarded a set-aside portion at a price higher than its offer price under the non-set-aside portion. The proposed revisions are incorporated into the clause below:

Defense Logistics Agency Defense Logistics Acquisition Directive provision and clause.

I237.06 NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (DEVIATION)

Required in all domestic bulk solicitations/contracts when the solicitation contains one or more partial set-aside items. Be sure lead-in appears above the clause. This clause is a deviation from FAR Clause I237.

THE FOLLOWING CLAUSE APPLIES ONLY TO PARTIAL SMALL BUSINESS SET-ASIDE LINE ITEMS THAT MAY BE CONTAINED IN THIS DOCUMENT.

I237.06 NOTICE OF PARTIAL SMALL BUSINESS SET–ASIDE (DEVIATION) (DESC)

(a) DEFINITION. Small business concern, as used in this clause, means a concern, including its affiliates that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) GENERAL.

(1) A portion of certain items of this procurement, as listed in the Schedule, has been set aside for award to eligible small businesses. The quantities indicated for such items in the Schedule include the set-aside portion. All offerors are urged to offer the maximum quantities they desire and are capable of delivering. Small business concerns interested in receiving a set-aside contract should submit an offer in the same manner as though there were no set-aside. Volumes offered by qualified small business concerns will be evaluated for the non-set-aside and set-aside portions of the procurement. Separate offers should not be submitted on the non-set-aside and set-aside portions.

(2) The partial small business set-aside of the procurement is based on a determination by the Contracting Officer that it is in the interest of maintaining or mobilizing the nation's full production capacity or in the

interest of national defense programs, or in the interest of assuring that a fair portion of Government procurement is placed with small business concerns.

(3) All of the offers received under this solicitation will first be negotiated as to price and an evaluation will be made as though there were no set-aside.

(4) For the purposes of set-aside evaluation, when an offer contains increments at different prices, each increment will be considered a separate offer. Except as provided in (d) below, negotiations will be limited to the offered quantities not awarded under the provision of (c)(2) below.

(c) SET-ASIDE AWARD PROCEDURE.

(1) The price for the small business set-aside portion will be negotiated by the Contracting Officer based upon prices the Government would otherwise pay the successful offeror for the non-set-aside portion of the location under this solicitation, adjusted for transportation charges and other factors. In the case of a small business concern whose offer is determined by the evaluation process to be low on the non-set-aside portion, awards of the set-aside portion will be made to that small business concern without further negotiation. Contracts for any remaining set-aside portions will be negotiated with those eligible small business concerns that have submitted a responsive offer on the various items for which a set-aside has been established. In no event will a small business concern be awarded a set-aside portion at a price higher than its offer price under the non-set-aside portion.

(2) Negotiations for small business set-aside awards will begin with the small business concern with the lowest evaluated price and a quantity of offered product remaining. If the low small business concern on the item does not offer to supply product at the set-aside price established in accordance with (1) above, the next low small business concern on the item will be given the same opportunity; this process will continue with the successive low small business concerns until all small business concerns have been contacted.

(3) The Government reserves the right to make awards to the otherwise low offeror for all or any portion of the set-aside quantities, without regard to the size of the offeror, if eligible small business concerns do not offer a quantity of product sufficient to meet a set-aside requirement or do not offer to supply at the set-aside prices. The total quantity that will be awarded a small business offeror on both the unreserved and reserved portions will not exceed the total quantity offered under this solicitation by such small business offerors. However, if insufficient product is offered by small business concerns to meet the quantity set aside for small business, small business concerns with which the Government has already commenced negotiations may be given an opportunity to offer additional product.

(4) Where the Trade Agreements Act applies to the non-set-aside portion, offers of eligible products will be treated as if they were qualifying country end products.

(d) AGREEMENT. For the set-aside portion of the acquisition, a small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States. The term United States includes its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed $25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply in connection with construction or service contracts.

Dated: May 5, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10969 Filed 5–7–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0062]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Defense Information Systems Agency proposes to delete a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 9, 2010 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette M. Weathers-Jenkins at (703) 681–2103.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705.

The Defense Information Systems Agency proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 4, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

KEUR.04

SYSTEM NAME:

Security Clearance File (February 22, 1993; 58 FR 10562).

REASON:

These records are covered under system of records notice V5–05, Joint Personnel Adjudication System (JPAS) (July 1, 2005; 70 FR 38120), therefore it can be deleted.

[FR Doc. 2010–10939 Filed 5–7–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services (OSERS); Overview Information; Centers for Independent Living; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.400A and 84.132A.

Dates:

Applications Available: May 10, 2010.

Date of Pre-Application Meeting: May 20, 2010.

Deadline for Transmittal of Applications: June 9, 2010.

Deadline for Intergovernmental Review: August 9, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides support for planning,

conducting, administering, and evaluating centers for independent living (CILs) that comply with the standards and assurances in section 725 of the Rehabilitation Act of 1973, as amended (Act), consistent with the design included in the State Plan for Independent Living (SPIL) for establishing a statewide network of CILs.

Program Authority: 29 U.S.C. 796f–1; American Recovery and Reinvestment Act of 2009, Pub. L. 111–5 (ARRA).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, and 97. (b) The regulations for this program in 34 CFR parts 364 and 366.

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian Tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $10,229,435 from the American Recovery and Reinvestment Act of 2009 (ARRA) and $596,334 from the FY 2010 Centers for Independent Living (CIL) appropriation. The purposes of the ARRA include the following:

(1) To preserve and create jobs and promote economic recovery;

(2) To assist those most impacted by the recession;

(3) To provide investments needed to increase economic efficiency by spurring technological advances in science and health;

(4) To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefit; and

(5) To stabilize State and local government budgets in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases.

Estimated Range of Awards: $100,000–$1,550,000.

Estimated Average Size of Awards: $386,635.

Estimated Number of Awards: 28, distributed in the following manner:

States and territories	Estimated available funds	Source of funds	Estimated number of awards
Alaska	$117,089	ARRA	1
American Samoa	154,046	FY 2010 CIL Appropriation	1
Georgia	683,510	ARRA	1
Illinois	1,066,604	ARRA	9
Maryland	442,288	FY 2010 CIL Appropriation	2
Michigan	2,330,310	ARRA	5
New Jersey	625,000	ARRA	1
New York	1,500,000	ARRA	3
North Carolina	987,500	ARRA	1
Ohio	100,000	ARRA	1
Tennessee	1,000,000	ARRA	1
Texas	1,550,000	ARRA	1
Washington	269,422	ARRA	1

Note: For all entities except American Samoa and Maryland, the dollar amount in the column "Estimated available funds" represents the total amount of funding that is available to establish new CILs in each State. Since these funds will be used to provide more than one year of support for the operation of new centers, the amount listed is not the amount that is available annually for grant awards in that State. In the case of American Samoa and Maryland, however, the source of funds indicated in the table is the FY 2010 CIL appropriation, rather than ARRA, and the funds do represent the amount available in this year. Please refer to the application package for each State's annual amount per project period and the number of project periods applicable to each grant. The application package also contains information regarding the geographic area or areas in each State that applicants must propose to serve. The Department will not make awards to applicants in a State that was required to amend its SPIL in order to receive ARRA funds under the CIL program until the Department has approved the amendment to the SPIL.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* To be eligible to apply, an applicant must—

(a) Be a consumer-controlled, community-based, cross-disability, nonresidential, private nonprofit agency;

(b) Have the power and authority to—

(1) Carry out the purpose of part C of title VII of the Act and perform the functions listed in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366 within a community located within any State in which the Secretary has approved the State Plan required by section 704 of the Act or in a bordering State; and

(2) Receive and administer—

(i) Funds under 34 CFR part 366;

(ii) Funds and contributions from private or public sources that may be used in support of a center; and

(iii) Funds from other public and private programs;

(c) Be able to plan, conduct, administer, and evaluate a center consistent with the standards and assurances in section 725(b) and (c) of the Act and subparts F and G of 34 CFR part 366;

(d) Either—

(1) Not currently be receiving funds under part C of chapter 1 of title VII of the Act; or

(2) Propose the expansion of an existing center through the establishment of a separate and complete center (except that the governing board of the existing center may serve as the governing board of the new center) at a different geographical location;

(e) Propose to serve one or more of the geographic areas that are identified as unserved or underserved by the States and territories listed under *Estimated Number of Awards* in this notice; and

(f) Submit appropriate documentation demonstrating that the establishment of a new center is consistent with the design for establishing a statewide network of centers in the State plan of the State or territory whose geographic area or areas the applicant proposes to serve.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA numbers 84.400A and 84.132A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The program narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the program narrative (Part III) to the equivalent of no more than 35 double-spaced pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application and Instructions for Federal Assistance; Part IV, the assurances, certifications, and disclosures; or the one-page abstract. However, the page limit does apply to all of the program narrative section (Part III).

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: May 10, 2010.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with Rehabilitation Services Administration (RSA) staff from the Office of Special Education and Rehabilitative Services. The pre-application meeting will be held on May 20, 2010. Interested parties may participate in this meeting by conference call with RSA staff between 1:00 p.m. and 3:00 p.m., Washington, DC time. RSA staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

Deadline for Transmittal of Applications: June 9, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application system (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 9, 2010.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Centers for Independent Living Program—CFDA Numbers 84.400A and 84.132A must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Sean Barrett, U.S. Department of Education, 400 Maryland Avenue, SW., room 5016, Potomac Center Plaza (PCP), Washington, DC 20202–2800. FAX: (202) 245–7590.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.400A or 84.132A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following

address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.400A or 84.132A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 366.27 and are listed in the application package.

2. *Review and Selection Process:* In selecting an application for an award under this program, an additional factor we consider is comments regarding the application, if any, by the Statewide Independent Living Council in the State in which the applicant is located.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant. In addition, the GAN includes terms and conditions necessary for effective implementation of data collection and accountability requirements under the ARRA.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Some of the funds awarded through this competition were appropriated under the ARRA and are subject to additional accountability and transparency reporting requirements, which are described in section 1512(c) of the ARRA. Grantees receiving funds provided by the ARRA must be able to distinguish these funds from any other funds they receive through this program. Recipients of ARRA funds will be required to submit quarterly reports on the expenditure of these funds no later than ten days after the end of each calendar quarter through a centralized reporting Web site administered by the Office of Management and Budget (OMB): *http://www.federalreporting.gov.* The information reported at this Web site will be available to the Department, the White House, OMB, and the public on *http://www.Recovery.gov.* Additional guidance providing further detail on the quarterly report is available at: *http://www2.ed.gov/policy/gen/leg/recovery/section-1512.html.* Additional guidance on the use of ARRA funds by centers for independent living can be found at: *http://www.ed.gov/print/policy/gen/leg/recovery/factsheet/rehab-act.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department measures outcomes in the following three areas to evaluate the overall effectiveness of projects funded under this competition: (1) The effectiveness of individual services in enabling consumers to access previously unavailable transportation, appropriate accommodations to receive health care services, and/or assistive technology resulting in increased independence in at least one significant life area; (2) the effectiveness of individual services designed to help consumers move out of institutions and into community-based settings; and (3) the extent to which projects are participating in community activities to expand access to transportation, health care, assistive technology, and housing for individuals with disabilities in their communities. Grantees will be required to report annually on the percentage of their consumers who achieve their individual goals in the first two areas and on the percentage of their staff, board members, and consumers involved in community activities related to the third area.

All grantees will be required to submit an annual performance report documenting their success in addressing these performance measures, as well as the standards and assurances in section 725 of the Act.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Sean Barrett, U.S. Department of Education, 400 Maryland Avenue, SW., room 5016, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7604 or by e-mail: *sean.barrett@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 5, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–11007 Filed 5–7–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Materials Strategy Request for Information

AGENCY: Department of Energy.

ACTION: Notice of availability of Request for Information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) is seeking information from stakeholders on rare earth elements and other materials used in energy technologies, particularly clean energy components and applications, and energy efficiency technologies.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this Request for Information (RFI), please contact DOE at *materialstrategy@hq.doe.gov* or call 202–586–5800. The RFI is also available on DOE's Web site at *http://www.energy.gov.*

DATES: Responses to the RFI are due no later than 5 p.m. (EDT) on June 7, 2010.

SUPPLEMENTARY INFORMATION: DOE recently announced its intent to develop a strategic plan for addressing the role of rare earth elements and other materials in energy technologies and processes. The responses to the RFI will help DOE develop a more accurate picture of current and future supply and demand for these materials; identify the potential for supply disruptions; and determine the best policies to promote diverse, sustainable and economical supplies in the future.

Dated: May 5, 2010.

David Sandalow,

Assistant Secretary for Policy and International Affairs, Department of Energy.

[FR Doc. 2010–10980 Filed 5–7–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Blue Ribbon Commission on America's Nuclear Future

AGENCY: Department of Energy, Office of Nuclear Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Blue Ribbon Commission on America's Nuclear Future (the Commission). The Commission was organized pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) (the Act). This notice is provided in accordance with the Act.

DATES:

Tuesday, May 25, 2010: 8:30 a.m.–5 p.m.

Wednesday, May 26, 2010: 8:30 a.m.–12 p.m.

ADDRESSES: Washington Marriott, 1221 22nd Street, NW., Washington, DC 20037, 202–872–1500.

FOR FURTHER INFORMATION CONTACT: Timothy A. Frazier, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone (202) 586–4243 or facsimile (202) 586–0544; e-mail *CommissionDFO@nuclear.energy.gov.* Additional information may also be available at *http://www.brc.gov.*

SUPPLEMENTARY INFORMATION: Background: The President directed that the Blue Ribbon Commission on America's Nuclear Future (the Commission) be established to conduct a comprehensive review of policies for managing the back end of the nuclear fuel cycle. The Commission will provide advice and make recommendations on issues including alternatives for the storage, processing, and disposal of civilian and defense spent nuclear fuel and high-level nuclear waste.

The Commission held its first full Commission meeting on March 25 and 26, 2010. The Commission is scheduled to submit a draft report to the Secretary by July 2011, and a final report by January 2012.

Purpose of the Meeting: The meeting will provide the Commission with a broad range of perspectives from various stakeholder groups. Additionally, the Commission will discuss an action plan for moving forward and subcommittees.

Tentative Agenda: The meeting is expected to start at 8:30 a.m. on May 25 with review of the Commission action plan and Commission discussion of subcommittees. The Commission will then hear presentations from various stakeholder groups, and ask questions of the presenters to provide additional information for Commission consideration. The meeting on May 26 is expected to start at 8:30 a.m. with additional presentations, a discussion by the Commission of next steps, and public statements. The meeting will conclude at 12 p.m.

Public Participation: The meeting is open to the public. Individuals and representatives of organizations who would like to offer comments and suggestions may do so at the end of the meeting on Wednesday, May 26, 2010. Approximately 45 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 8:00 a.m. on May 26, 2010.

Those not able to attend the meeting or have insufficient time to address the committee are invited to send a written statement to Timothy A. Frazier, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, e-mail to *CommissionDFO@nuclear.energy.gov,* or post comments on the Commission Web site at *http://www.brc.gov.*

Additionally, the meeting will be available via live webcast. The link will be available at *http://www.brc.gov.*

Minutes: The minutes of the meeting will be available at *http://www.brc.gov* or by contacting Mr. Frazier. He may be reached at the postal address or e-mail address above.

Issued in Washington, DC, on May 5, 2010.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2010–11015 Filed 5–7–10; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9148–8]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. Seq.*). 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 regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 2358.02; Nitrogen Oxides Ambient Air Monitoring (Final Rule); 40 CFR part 58; was approved on

04/05/2010; OMB Number 2060–0638; expires on 04/30/2013; Approved with change.

EPA ICR Number 2346.01; Questionnaire For Drinking Water Utilities Participating In Emerging Contaminant Sampling Program (New); was approved on 04/15/2010; OMB Number 2080–0078; expires on 04/30/2013; Approved with change.

EPA ICR Number 1665.09; Confidentiality Rules (Renewal); 40 CFR part 2, subparts A and B; was approved on 04/30/2010; OMB Number 2020–0003; expires on 12/31/2010; Approved without change.

EPA ICR Number 1066.06; NSPS for Ammonium Sulfate Manufacturing Plants; 40 CFR part 60, subpart A and 40 CFR part 60, subpart PP; was approved on 04/30/2010; OMB Number 2060–0032; expires on 04/30/2013; Approved without change.

Comment Filed

EPA ICR Number 2372.01; Mandatory Reporting of Greenhouse Gases (Proposed Rule for Injection and Geological Sequestration of Carbon Dioxide, Subpart RR); in 40 CFR part 98; 40 CFR part 98, subpart RR; OMB filed comment on 04/13/2010.

EPA ICR Number 2376.01; Regulation to Establish Mandatory Reporting of Greenhouse Gases (Subpart W, Petroleum and Natural Gas—Proposed Rule); in 40 CFR part 98, subpart W; OMB filed comment on 04/13/2010.

EPA ICR Number 2373.01; Mandatory Reporting of Greenhouse Gases (Proposed Rule for Fluorinated Greenhouse Gas Emissions, Subparts I, L, OO, and SS); in 40 CFR part 98, subparts I, LL, OOa and SS; OMB filed comment on 04/13/2010.

EPA ICR Number 2383.01; NESHAP for Gold Mine Ore Processing; in 40 CFR part 63, subpart EEEEEEE and 40 CFR part 63, subpart A; OMB filed comment on 04/29/2010.

Dated: May 3, 2010.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2010–10999 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0405; FRL–9149–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Miscellaneous Coating Manufacturing (Renewal), EPA ICR Number 2115.03, OMB Control Number 2060–0535

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (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 collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before June 9, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0405, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: 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, and (2) OMB at: 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: Robert C. Marshall, Jr., Office of Compliance, Mail Code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number (202) 564–7021; *fax number:* (202) 564–0050; *e-mail address: marshall.robert@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 July 8, 2009 (74 *FR* 32581), 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 number EPA–HQ–OECA–2009–0405, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the 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," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or on 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: NESHAP for Miscellaneous Coating Manufacturing (Renewal)

ICR Numbers: EPA ICR Number 2115.03, OMB Control Number 2060–0535.

ICR Status: This ICR is scheduled to expire on June 30, 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, and 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: Respondents are owners and operators of miscellaneous coating manufacturing operations. Respondents must submit notifications and reports and maintain records required by the

General Provisions (40 CFR part 63, subpart A). Recordkeeping of parameters related to air pollution control technologies is required. The reports and records will be used to demonstrate compliance with the emission limitations and work practice standards.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 296 hours per response. 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: Miscellaneous coating manufacturing facilities.

Estimated Number of Respondents: 133.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 167,572.

Estimated Total Annual Cost: $17,007,914, which includes $14,192,714 in labor costs, $30,000 in capital/startup costs, and $2,785,200 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the calculation methodology for labor hours or costs to the respondents in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for respondents is very low, negative, or non-existent. Therefore, the labor hours and cost figures in the previous ICR reflect the current burden to the respondents and are reiterated in this ICR.

In the previous ICR renewal, the approved annual hour burden was 167,832 hours. The actual annual hour burden as calculated in the previous ICR was 167,572 hours. By this ICR, the Agency is requesting approval of 167,572 hours.

Dated: May 3, 2010.

John Moses, Director,

Collection Strategies Division.

[FR Doc. 2010–10994 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2009–0817, FRL–9149–2; EPA ICR No. 2366.01; OMB Control No. 2040–NEW]

Agency Information Collection Activities; Proposed Collection; Comment Request; Stormwater Management Including Discharges From Developed Sites Questionnaires

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Comments must be submitted on or before June 9, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2009–0817 to (1) EPA online using *http://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, Mailcode 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: Jan Matuszko, Engineering and Analysis Division, Office of Water, (4303T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–566–1035; *fax number:* 202–566–1053; *e-mail address: matuszko.jan@epa.gov* or Holly Galavotti, Water Permits Division, (4203M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–564–1489; *fax number:* 202–564–6392; *e-mail address: galavotti.holly@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 30, 2009 (74 FR 56191–56193), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received over 80 comments from associations, environmental groups, cities, counties, municipalities, States, universities, State and private transportation departments, and individuals. The topics raised in these comments address both general matters related to the ICR, such as legal authority, recipients, burden, additional data sources, and suggested revisions to specific questions. The comments are summarized in the supporting statement for this ICR. Any additional comments on this proposed 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–2009–0817, which is available for online viewing at *http://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 *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," 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 *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: Stormwater Management Including Discharges from Developed Sites Questionnaires.

ICR numbers: EPA ICR No. 2366.01, OMB Control No. 2040–NEW.

ICR Status: This ICR is for a new information collection activity. 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 order to evaluate current stormwater management practices, the scope of the current State and local programs, current new and redevelopment projects, and any EPA regulation to control long term stormwater discharges from developed sites, EPA is proposing several data collection activities. Because this regulation could impact many different types of entities, the ICR announced today consists of multiple questionnaire instruments designed to collect information from: Owners and developers of residential, commercial, industrial, and non-commercial sites; owners and operators of Municipal Separate Storm Sewer Systems (MS4s) (including transportation-related facilities such as State, county, and local departments of transportation that own/operate roadway systems); and States and EPA regions which are NPDES permitting authorities.

EPA is distributing the Owner/Developer Questionnaires to collect information on development and redevelopment projects and long term stormwater discharge controls and/or BMPs installed at these projects. EPA is particularly interested in obtaining information on those controls/BMPs that promote onsite stormwater retention. This information will be used to assist EPA in evaluating various regulatory options and determining the project level and nationwide costs and pollutant reductions associated with regulating long-term stormwater discharges associated from newly developed and redeveloped sites. Additionally, EPA will collect financial data to assess the economic impact of the proposed rulemaking.

The MS4, Transportation, and NPDES Permitting Authority Questionnaires will collect information on the scope of current State, county and local stormwater programs and the stormwater management practices or standards that are currently required for controlling long term stormwater discharges from developed sites. This includes stormwater program implementation such as jurisdiction, implementation, oversight, enforcement, maintenance and monitoring as well as program requirements such as retrofit of existing development and performance standards, design criteria, or retention practices for long term stormwater discharge control at newly and redeveloped sites. Additionally, EPA will collect associated budget and funding information. EPA intends to use this information to assess existing conditions, regulatory options, and the costs and impact to MS4s, and NPDES Permitting Authorities that may result from a regulation.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 30 hours per response. 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.

The ICR support statement contained in the docket provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 5,516.

Frequency of response: Once.

Estimated total annual burden hours: 167,669.

Estimated total annual costs: $7,009,179. This includes an estimated burden cost of $6,971,692 for labor and $37,487 for operations and maintenance.

Dated: May 3, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–10995 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R05–OW–2009–0932; FRL–9148–9; EPA ICR No. 2379.01; OMB Control Number 2005–NEW]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Great Lakes Accountability System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (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 for a new information 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 June 9, 2010.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–R05–OW–2009–0932, to (1) EPA online using *http://www.regulations.gov* (our preferred method) or by mail to: Environmental Protection Agency, Great Lakes National Program Office, Attn: Rita Cestaric, 77 W. Jackson Blvd., Chicago, Illinois 60604, and (2) OMB at: 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: Rita Cestaric, USEPA, Great Lakes National Program Office, 77 W. Jackson Boulevard, Chicago, Illinois 60604; *telephone number:* (312) 886–6815; *fax number:* (312) 697–2014; *e-mail address: cestaric.rita@epa.gov* or Marcia Damato, USEPA, Great Lakes National Program Office, 77 West Jackson Boulevard, Chicago, Illinois 60604; *telephone number:* (312) 886–0266; *fax number:* (312) 582–5862; *e-mail address: damato.marcia@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 January 5, 2010 (75 FR 362), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d) and received one set of comments which is addressed in this ICR. 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 number EPA–R05–OW–2009–0932, which is available for public viewing online at *http://www.regulations.gov* and in person viewing at the EPA Great Lakes National Program Office, 77 West Jackson Boulevard, Chicago, Illinois 60604. Materials are available for viewing from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays; telephone number (312) 886–6815.

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," 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 *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: Great Lakes Accountability System.

ICR Numbers: EPA ICR No. 2379.01, OMB Control No. 2005–NEW.

ICR status: This ICR is for a new information collection activity. 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 and 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 2010, EPA, in concert with its Federal partners, will begin implementation of a new Great Lakes Restoration Initiative (GLRI) that was included in the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010 (Pub. L. 111–88). The GLRI will invest funds in programs and projects strategically chosen to target the most significant environmental problems in the Great Lakes ecosystem.

The legislation calls for increased accountability for the GLRI and directs EPA to implement a process to track, measure, and report on progress. As part of this process, Federal and non-Federal entities receiving GLRI funds will be required to submit detailed information on GLRI projects as part of their funding agreement. Recipients will be required to provide information on the nature of the activity, responsible organization, organizational point of contact, resource levels, geographic location, major milestones and progress toward GLRI goals. The information is necessary to provide an accurate depiction of activities, progress, and results. Information will be updated on a quarterly basis.

A Web-based Great Lakes Accountability System (GLAS) will be the primary mechanism for collecting information on GLRI activities. GLAS will be available at *http://restore.glnpo.net:8080/glas/login.htm.* The Web-site will contain a user-friendly data entry interface for recipients to enter and submit project information directly into the GLAS. The data entry interface consists of a series of screens containing pull-down menus and text boxes, where users can enter project specific information. The GLAS will provide the necessary information for reports to the President and Congress and will be accessible to the public via Internet.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 33 hours per project for State, local and Tribal governments, and 41.1 hours per project for non-governmental 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: Great Lakes Restoration Initiative Funding Recipients.

Estimated Number of Respondents: 594 (463 State, local and Tribal governments, 131 non-government organizations).

Frequency of Response: Quarterly.

Estimated Total Annual Hour Burden: 20,663 hours.

Estimated Total Annual Costs: $1,212,164. This includes an estimated annual labor cost of $1,212,164.00 and no capital investment or maintenance and operational costs.

Dated: May 3, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–10998 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0542; FRL–9148–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Emissions Guidelines for Commercial and Industrial Solid Waste Incineration Units (Renewal), EPA ICR Number 1927.05, OMB Control Number 2060–0451

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (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 collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before June 9, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0542, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: 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, and (2) OMB at: 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: Robert C. Marshall, Jr., Office of Compliance, Mail code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–7021; *fax number:* (202) 564–0050; *e-mail address: marshall.robert@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 July 30, 2009 (74 *FR* 38005), 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 number EPA–HQ–OECA–2009–0542, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the 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," 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 *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: Emissions Guidelines for Commercial and Industrial Solid Waste Incineration Units (Renewal)

ICR Numbers: EPA ICR Number 1927.05, OMB Control Number 2060–0451.

ICR Status: This ICR is scheduled to expire on June 30, 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, and 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: The Emission Guidelines for Commercial and Industrial Solid Waste Incineration (CISWI) Units were promulgated on December 1, 2000. The guidelines (standards) apply to solid waste incinerators in 40 CFR part 60, subpart DDDD. These standards fulfill the requirements of sections 111 and 129 of the Clean Air Act (CAA). This subpart affects the administrator of an air quality program in a state, or United States protectorate with one or more existing CISWI units that commenced construction either on, or before, November 30, 1999.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 232 hours per response. 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: Commercial and industrial solid waste incineration units.

Estimated Number of Respondents: 97.

Frequency of Response: Initially, occasionally, semiannually and annually.

Estimated Total Annual Hour Burden: 31,619.

Estimated Total Annual Cost: $2,904,577, which includes $2,884,110 in labor costs, no capital/startup costs, and $20,467 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the cost to the respondents in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the respondents is very low, negative or non-existent. Therefore, the cost figures in the previous ICR reflect the current burden to the respondents and are reiterated in this ICR. However, there is a decrease of one hour in the total labor hours to the respondent in this ICR due to rounding.

In accordance with the Paperwork Reduction Act, actions related to case development activities have been removed from the Agency cost figures. Therefore, the cost to the Agency as reported in this ICR has been reduced from $87,648.00 to $46,463.00

Dated: May 4, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–11001 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9149–3]

Clean Air Act Advisory Committee (CAAAC): Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Environmental Protection Agency (EPA) established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

Dates and Addresses: Open meeting notice; Pursuant to 5 U.S.C. App. 2 Section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on May 27, 2010 from 8 a.m. to 4:15 p.m. at the Almas Conference Center located at 1315 K Street, NW., Washington, DC. Seating will be available on a first come, first served basis. The Economic Incentives and

Regulatory Innovations subcommittee will meet on May 26, 2010 from 8:30 a.m. to 12 p.m. The Permits, New Source Review and Toxics subcommittee will meet on May 26, 2010 from approximately 1 p.m. to 4:30 p.m. These meetings will be held at the Hamilton Crown Plaza at 1001 14th Street NW., Washington, DC, next to the Almas Center. The Clean Air Excellence Awards Program will be presented at the Almas Conference Center starting at 4:30 p.m. on May 26, 2010. The agenda for the CAAAC full committee meeting on May 27, 2010 will be posted on the Clean Air Act Advisory Committee Web site at *http://www.epa.gov/oar/caaac/.*

Inspection of Committee Documents: The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket OAR–2004–0075. The Docket office can be reached by e-mail at: *a-and-r-Docket@epa.gov* or FAX: 202–566–9744.

FOR FURTHER INFORMATION CONTACT: Concerning the CAAAC, please contact Pat Childers, Office of Air and Radiation, U.S. EPA (202) 564–1082, FAX (202) 564–1352 or by mail at U.S. EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW., Washington, DC 20004. For information on the Subcommittees, please contact the following individuals: (1) Permits/NSR/Toxics Integration—Liz Naess, (919) 541–1892; (2) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, (202) 564–1667; and (3) Mobile Source Technical Review—John Guy, (202) 343–9276. Additional Information on these meetings, CAAAC, and its Subcommittees can be found on the CAAAC Web site: *http://www.epa.gov/oar/caaac/.*

For information on access or services for individuals with disabilities, please contact Mr. Pat Childers at (202) 564–1082 or *childers.pat@epa.gov.* To request accommodation of a disability, please contact Mr. Childers, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: May 5, 2010.

Pat Childers,

Designated Federal Official, Clean Air Act Advisory Committee Office of Air and Radiation.

[FR Doc. 2010–11003 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Release of Exposure Draft on Definitional Changes Related to Deferred Maintenance and Repairs: Amending SFFAS 6, Accounting for Property, Plant, and Equipment

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April, 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has released an Exposure Draft on *Definitional Changes Related to Deferred Maintenance and Repairs: Amending Statement of Federal Financial Accounting Standard 6, Accounting for Property, Plant, and Equipment.*

The proposed Exposure Draft represents a first step toward improving reporting on deferred maintenance.

The Exposure Draft is available on the FASAB home page *http://www.fasab.gov/exposure.html.* Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by June 25, 2010, and should be sent to: Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: May 5, 2010.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2010–10970 Filed 5–7–10; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2010–N–05]

Privacy Act of 1974; System of Records

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of the establishment of new systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended (Privacy Act), the Federal Housing Finance Agency (FHFA) gives notices of two proposed Privacy Act systems of records.

The first proposed system is "Compensation Information Provided by the Regulated Entities" (FHFA–4), which will contain compensation-related information on entities regulated by FHFA. The information will be analyzed and evaluated by FHFA in carrying out its statutory authority to prohibit and withhold compensation. Individuals covered by the system will be present and former directors and executives of the Federal Home Loan Banks and present and former directors, executives and employees of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association.

The second proposed system is "Photographic Files" (FHFA–5), which will contain photographic materials, in print and electronic format, related to FHFA staff and events. FHFA will use these photographic records for distribution and reproduction in agency documents and communications such as reports, agency plans, training materials, press releases, briefing materials, research documents, newsletters, and presentations.

DATES: These two new systems of records will become effective on June 21, 2010 without further notice unless comments necessitate otherwise. FHFA will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before June 9, 2010.

ADDRESSES: Submit comments to FHFA *only once,* identified by "2010–N–05," using any one of the following methods:

- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/No. 2010–N–05, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/No. 2010–N–05, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to *RegComments@fhfa.gov.*

Please include "Comments/No. 2010–N–05," in the subject line of the message.

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Please include "Comments/No. 2010–N–05" in the subject line of the message.

See **SUPPLEMENTARY INFORMATION** for additional information on submission and posting of comments.

FOR FURTHER INFORMATION CONTACT: John Major, Privacy Act Officer, *john.major@fhfa.gov,* 202–408–2849, or David A. Lee, Senior Agency Official for Privacy, *david.lee@fhfa.gov,* 202–408–2514 (not toll free numbers), Federal Housing Finance Agency, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

Instructions: FHFA seeks public comments on the two proposed new systems of records and will take all comments into consideration before issuing the final notice. *See* 5 U.S.C. 552a(e)(4) and (11). In addition to referencing "Comments/No. 2010–N–05," please reference the title and number of the system of records your comment addresses: "Compensation Information Provided by the Regulated Entities" (FHFA–4), or "Photographic Files" (FHFA–5).

Posting and Public Availability of Comments: All comments received will be posted without change on the FHFA Web site at *http://www.fhfa.gov,* and will include any personal information provided. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at 202–414–6924.

II. Introduction

This notice informs the public of FHFA's proposal to establish and maintain two new systems of records. This notice satisfies the Privacy Act requirement that an agency publish a system of records notice in the **Federal Register** when there is an addition to the agency's system of records. It has been recognized by Congress that application of all requirements of the Privacy Act to certain categories of records may have an undesirable and often unacceptable effect upon agencies in the conduct of necessary public business. Consequently, Congress established general exemptions and specific exemptions that could be used to exempt records from provisions of the Privacy Act. Congress also required that exempting records from provisions of the Privacy Act would require the head of an agency to publish a determination to exempt a record from the Privacy Act as a rule in accordance with the Administrative Procedures Act. The Director of FHFA has determined that records and information in these two new systems of records are not exempt from requirements of the Privacy Act.

As required by the Privacy Act, 5 U.S.C. 552a(r), and pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427, 35), FHFA has submitted a report describing the two new systems of records covered by this notice, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

The proposed two new systems of records described above are set forth in their entirety below.

FHFA–4

SYSTEM NAME:

Compensation Information Provided by the Regulated Entities.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATION:

Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552 and 1625 Eye Street, NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former directors and executives of the Federal Home Loan Banks and present and former directors, executives and employees of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain information such as name, position, organization, address, education, professional credentials, work history, compensation data, and employment information of present and former directors and executives of the Federal Home Loan Banks and present and former directors, executives and employees of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association (collectively, "regulated entities").

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained pursuant to 12 U.S.C. 1427, 1452(h), 4502(6), 4502(12), 4513, 4514, 4517, 4518, 4526, 4617, 4631, 4632, 4636, and 1723a(d).

PURPOSE(S):

The information in this system of records will be analyzed and evaluated by FHFA staff in carrying out the statutory authorities of the Director with respect to the oversight of compensation provided by the regulated entities, consistent with the safety and soundness responsibilities of FHFA under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended, and the Federal Home Loan Bank Act, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

It shall be a routine use to disclose information contained in this system for the purposes and to the users identified below:

1. FHFA personnel authorized as having a need to access the records in performance of their official functions.

2. Another Federal agency if the records are relevant and necessary to carry out that agency's authorized functions and consistent with the purpose of the system.

3. A consultant, person, or entity that contracts or subcontracts with FHFA, to the extent necessary for the performance of the contract or subcontract and consistent with the purpose of the system, provided that the person or entity acknowledges in writing that it is required to maintain Privacy Act safeguards for the information.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored in paper and electronic format.

RETRIEVABILITY:

Records can be retrieved by last name, first name, organization, and position.

SAFEGUARDS:

Records are maintained in controlled access areas. Electronic records are protected by restricted access procedures, including user identifications and passwords. Only FHFA staff whose official duties require access are allowed to view, administer, and control these records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with National Archives and Records Administration and FHFA retention schedules. Records are disposed of according to accepted techniques.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Policy, Analysis and Research and the Division of Bank Regulation, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552.

NOTIFICATION PROCEDURES:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer by electronic mail, regular mail, or fax. The electronic mail address is: *privacy@fhfa.gov.* The regular mail address is: Privacy Act Officer, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006. The fax number is: 202–408–2580. For the quickest possible handling, you should mark your electronic mail, letter, or fax and the subject line, envelope, or fax cover sheet "Privacy Act Request" in accordance with the procedures set forth in 12 CFR part 1204.

RECORD ACCESS PROCEDURES:

Direct requests to access, amend, or correct a record to the Privacy Act Officer, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 1204.

CONTESTING RECORD PROCEDURES:

Direct requests to contest or appeal an adverse determination for a record to the Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552, in accordance with the procedures set forth in 12 CFR part 1204.

RECORD SOURCE CATEGORIES:

The information is obtained from the regulated entities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Some information in this system that are investigatory and compiled for law enforcement purposes are exempt under subsection 552a(k)(2) of the Privacy Act to the extent that information within the system meets the criteria of that subsection of the Privacy Act. The exemption is necessary in order to protect information relating to law enforcement investigations and others who could interfere with investigatory and law enforcement activities. The exemption will preclude subjects of investigations from frustrating investigations, will avoid disclosure of investigative techniques, will protect the identities and safety of confidential informants and of law enforcement personnel, will ensure FHFA's ability to obtain information from various sources, will protect the privacy of third-parties, and will safeguard sensitive information.

Some information contained in this system of records may be proprietary to other Federal agencies and subject to exemptions imposed by those agencies, including the criminal law enforcement investigatory material exemption of 5 U.S.C. 552a(j)(2).

FHFA–5

SYSTEM NAME:

Photographic Files.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records cover present and former employees, visitors from other Federal agencies, and members of the public.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain photographs including hardcopy and electronic images, names, date of visit, and participation in events and programs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained pursuant to 12 U.S.C. 4513.

PURPOSE(S):

FHFA uses these records for reproduction in agency documents and communications such as reports, agency plans, training materials, press releases, briefing materials, research documents, newsletters, and presentations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

It shall be a routine use to disclose information contained in this system for the purposes and to the users identified below:

1. FHFA personnel authorized as having a need to access the records in performance of their official functions.
2. For distribution and reproduction for news, external relations, and public affairs purposes such as web sites, communications, reports, research, plans, press releases, and articles.
3. For reproduction in presentations and displays at events such as ceremonies, receptions, and training and educational programs.
4. In support of research activities conducted by FHFA personnel and other Federal agencies, as well as members of the public.
5. A consultant, person, or entity that contracts or subcontracts with FHFA, to the extent necessary for the performance of the contract or subcontract and consistent with the purpose of the system, provided that the person or entity acknowledges in writing that it is required to maintain Privacy Act safeguards for the information.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored on hardcopy and electronic media.

RETRIEVABILITY:

By name, photograph, date of event, name of event, or program.

SAFEGUARDS:

Records are maintained in controlled access areas. Electronic records are protected by restricted access procedures, including user identifications and passwords. Only FHFA staff whose official duties require access are allowed to view, administer, and control these records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with National Archives and Records Administration and FHFA retention schedules. Records are disposed of according to accepted techniques.

SYSTEM MANAGER(S) AND ADDRESS:

Office of External Relations, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552.

NOTIFICATION PROCEDURES:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer, Federal Housing Finance Agency, 1625 Eye Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 1204.

RECORD ACCESS PROCEDURES:

Direct requests to access, amend or correct a record to the Privacy Act Officer, Federal Housing Finance Agency, 1625 Eye Street NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 1204.

CONTESTING RECORD PROCEDURES:

Direct requests to contest or appeal an adverse determination for a record to the Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552, in accordance with the procedures set forth in 12 CFR part 1204.

RECORD SOURCE CATEGORIES:

Information is provided by the subject of the record, authorized representatives, supervisors, employers, other employees, other Federal, state, or local agencies, and commercial entities. Indexing information is derived from information recorded on photographs or from FHFA staff or other individuals who have knowledge of the event and individuals photographed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–11000 Filed 5–7–10; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 25, 2010.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Peter Paul Bell, Lake Forest, Illinois; to acquire voting shares of Lake Shore Wisconsin Corporation, Kohler, Wisconsin, and thereby indirectly acquire voting shares of Hiawatha National Bank, Hager City, Wisconsin.

Board of Governors of the Federal Reserve System, May 5, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–10986 Filed 5–7–10; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 4, 2010.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Commercial Bancshares Corporation, Frontenac, Missouri; to become a bank holding company by acquiring 25 percent or more of the voting shares of Centrust Financial, Inc., and thereby indirectly acquire voting shares of Centrust Bank, N.A., both of Northbrook, Illinois.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Specialty Bancor, Inc.; to become a bank holding company by acquiring 100 percent of the voting shares of Community State Bank, both of Austin, Texas.

Board of Governors of the Federal Reserve System, May 5, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–10985 Filed 5–7–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–08BH]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Morbidity Study of Former Marines, Dependents, and Employees Potentially Exposed to Contaminated Drinking Water at USMC Camp Lejeune—New—Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

On January 28, 2008, President Bush signed H.R. 4986: National Defense Authorization Act for Fiscal Year 2008 which requires ATSDR to develop a health survey of individuals possibly exposed to contaminated drinking water at Camp Lejeune. The survey will collect personal health information that may provide a basis for further reliable scientific studies of potentially adverse health impacts of exposure to contaminated water at Camp Lejeune. The Act requires the survey to be

developed within 120 days of enactment and to be conducted within one year of enactment.

Additionally, in 2005, a panel of independent scientists convened by ATSDR to explore opportunities for conducting additional health studies at Camp Lejeune recommended that the agency:

- Identify cohorts of individuals with potential exposure, including adults who lived on base; adults who resided off base, but worked on base; children who lived on base; and those who may have been exposed while in utero; and
- Conduct a feasibility assessment to address the issues involved in planning future studies of mortality, cancer incidence, and other health outcomes of interest at the base.

In response, ATSDR prepared a report on the feasibility of conducting future epidemiological studies at the base. ATSDR determined that available databases could be used to identify adults who lived at the base or civilians who worked at the base during the period when drinking water was contaminated with volatile organic compounds (VOCs).

In addition to questions on cancers, the health survey instrument will include questions on non-fatal diseases that can be confirmed by medical records and are known or suspected of being associated with VOCs.

This project proposes to examine the relationship between medically confirmed cancers and drinking water contaminated with VOCs including trichloroethylene (TCE), perchloroethylene, (PCE), and BTEX (benzene, toluene, ethylbenzene and xylenes) compounds by mathematically modeling the exposure to contaminated drinking water while living or working at Camp Lejeune.

The relationship between the following non-fatal diseases that can be confirmed by medical records and VOC-contaminated drinking water will also be examined: Parkinson's disease, kidney failure and other severe kidney diseases, severe liver diseases, lupus, aplastic anemia, TCE-related skin disorders, scleroderma, multiple sclerosis, motor neuron disease/amyotrophic lateral sclerosis, and infertility. In addition, the health survey instrument will include questions on miscarriages occurring to women who were pregnant while residing or working on base.

The health survey instrument will request information about the type of cancer or non-fatal, non-cancer disease, date of diagnosis, hospital of diagnosis, and doctor who diagnosed the disease to facilitate the acquisition of medical record confirmation. Because medical records are usually unavailable for miscarriages, the survey will not request information to facilitate medical record confirmation of this adverse outcome. For cancers, state of diagnosis will also be obtained to facilitate acquisition of cancer registry data. Self-reported cancers and other diseases will be confirmed by medical records or cancer registrations. To facilitate medical record confirmation, the participant will be asked to provide a copy of the medical record to ATSDR or to sign a medical records release form allowing ATSDR to gain access to the medical record. The survey will also collect information on residential history on base, occupational history, and information on several risk factors (e.g., socio-economic status, demographics, smoking, alcohol consumption, etc.). A space will also be provided so that the respondent can report other disease conditions. The collected information will be used to assign exposure status and to assess potential confounding.

To improve the credibility of the study, it is necessary to include an external, unexposed comparison group, similar in all respects to the Marines and civilian workers at Camp Lejeune except for exposure to VOC-contaminated drinking water. Camp Pendleton is that comparison group.

As required by law, health surveys will also be mailed to those who registered with the United States Marine Corps. Health surveys completed by those who were identified solely because they registered with the USMC will be analyzed separately ("registered" group).

There are no costs to the respondents other than their time. The estimated annualized burden hours are 58,013.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Former active duty marines and navy personnel stationed at Camp Lejeune during 1975–1985	45,500	1	45/60
Former civilian workers employed at Camp Lejeune during 1972–1985	1,733	1	45/60
Former dependents (now all adults) and former Marines who were stationed at Camp Lejeune prior to 1975—Camp Lejeune	6,284	1	45/60
Former active duty marines and navy personnel stationed at Camp Pendleton during 1975–1985 (comparison group)	10,833	1	45/60
Former civilian workers employed at Camp Pendleton during 1972–1985 (comparison group)	2,167	1	45/60
"Registered" group	10,833	1	45/60

Dated: May 4, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–11037 Filed 5–7–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–10–10BA]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–3806. Written

comments should be received within 30 days of this notice.

Proposed Project

Development and Testing of an HIV Prevention Intervention Targeting Black Bisexually-Active Men—New—National Center for HIV/AIDS, Viral Hepatitis, STD, and Tuberculosis Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

African Americans continue to be disproportionately affected by HIV/AIDS. Results from the National HIV Behavioral Surveillance Project showed that during 2001–2004 African-Americans accounted for the majority of HIV/AIDS diagnoses in 33 states. Black men who have sex with men (MSM) have been identified as the population with the highest rates of HIV infection in the U.S. and as a population in need of new HIV prevention interventions. Previous research indicates that 20% to 40% of Black MSM also have female sex partners. Interventions developed for gay men may not be relevant or appropriate for men who have sex with men and women (MSMW), many of whom do not self-identify as gay and who may need different prevention strategies for their male and female partners. There are no effective HIV risk reduction interventions for African-American MSMW.

The purpose of the proposed study is to develop and pilot-test three novel behavioral interventions to reduce sexual risk for HIV infection and transmission among African-American MSMW who do not inject drugs. Eligible respondents will be recruited using chain referral sampling techniques. Three study sites (Public Health Management Corporation (PHMC), Nova Southeastern University (NOVA), and California State University (CSU) at Dominguez Hills) will use a randomized controlled trial to evaluate the effectiveness of the intervention. Depending on the site, respondents will be reimbursed up to a total of $305 for their time and effort over the course of the study. If these interventions are found to be effective, organizations that implement risk-reduction interventions will be able to use the curricula to intervene with this population more successfully. Ultimately, the beneficiary of this data collection will be African-American MSMW. There is no cost to respondents other than their time. The total estimated annual burden hours are 2,250.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Type of respondent	Form name	Number of respondents	Responses per respondents	Average burden per response (in hours)
Prospective Participant	Screener	1,250	1	5/60
Enrolled Participant	Locator Form	750	1	10/60
Enrolled Participant—PHMC	Baseline Assessment	250	1	1
Enrolled Participant—Nova	Baseline Assessment	240	1	1
Enrolled Participant—CSU	Baseline Assessment	260	1	1
Enrolled Participant—PHMC	Acceptability/Feasibility Survey	250	6	10/60
Enrolled Participant—Nova	Acceptability/Feasibility Survey	240	1	10/60
Enrolled Participant—CSU	Acceptability/Feasibility Survey	260	1	10/60
Enrolled Participant—PHMC	Immediate Follow-Up Assessment	225	1	30/60
Enrolled Participant—Nova	Immediate Follow-Up Assessment	216	1	30/60
Enrolled Participant—CSU	Immediate Follow-Up Assessment	234	1	30/60
Enrolled Participant—PHMC	3 month Follow-Up Assessment	200	1	1
Enrolled Participant—Nova	3 month Follow-Up Assessment	192	1	1
Enrolled Participant—CSU	3 month Follow-Up Assessment	208	1	1

Dated: May 4, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–11058 Filed 5–7–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–10–10CW]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Translation and Dissemination of Promising Community Interventions for Preventing Obesity—New—Division of Nutrition, Physical Activity and Obesity (DNPAO), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The need for prevention and reduction of overweight and obesity is compelling. In the U.S., 65% of adults are overweight or obese (obesity is defined as having a body mass index of 30 or more). Obesity contributes to chronic conditions such as

hypertension, Type 2 diabetes, stroke, coronary heart disease, and osteoarthritis. Beyond the human costs, economic costs are extreme and are climbing. One estimate is that medical expenses related to this epidemic accounted for 9.1% of total U.S. medical expenditures in 1998, and the U.S. Surgeon General has estimated that direct and indirect costs related to obesity totaled $117 billion in 2000. Healthy People 2010 established goals for obesity reduction, which included targets of weight reduction of 15% for adults and 5% for children and youth.

Targeting communities at risk of overweight and obesity is an essential step toward realizing the goal of reversing current trends in obesity. Community-based programs to reduce risk of heart disease provide some models; however, outcomes vary and are affected by several confounding conditions. A report on prevention of childhood obesity, prepared by the Institute of Medicine in 2007, concluded that there are insufficient studies to generate recommendations for best practices in obesity prevention. Instead, the report compiles promising practices, including those set in communities.

CDC plans to apply methodology recommended by the CDC Task Force on Community Preventive Services to improve the translation and dissemination of promising practices into community-based obesity prevention programs. Information necessary to this purpose will be collected from the general public by a contractor. Information will be collected concerning respondents' knowledge, attitudes, and beliefs about obesity and physical activity; the need for community leaders to encourage healthier diets and more physical activity; and opportunities for leveraging current community efforts.

Two hundred fifty respondents will be recruited to participate in four on-line, small-group discussions over a period of about one month. The discussions will utilize Voice over Internet Protocol technology and will be facilitated by a moderator. Each discussion will last one hour. In preparation for the initial discussion, respondents will receive a confirmation e-mail and will be asked to review a guide to on-line discussion groups. In addition, discussion group participants will be asked to review a set of briefing materials prior to the first on-line group meeting.

Information will also be collected through an on-line questionnaire administered on two occasions. The questionnaire is designed to measure the relative importance of various proposals for policy and environmental change, and whether change has occurred in perceptions of roles and responsibilities for obesity prevention. The questionnaire will be administered to the 250 discussion group participants before the initial discussion group meeting ("pre-test"), and again after all four discussion groups have been completed ("post-test").

Finally, the on-line questionnaire will be administered to a comparison group of 700 respondents. The comparison group will complete the questionnaire on two occasions; however, this group will not participate in the on-line discussions or review the briefing materials.

The information collection will be used to identify key issues for community obesity prevention programs, to refine promising obesity prevention practices for targeted communities, and to facilitate the dissemination of promising practices for obesity prevention. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
General Public	Discussion Group Moderator's Guide.	250	4	1	1,000
	Confirmation e-mail with Guide to On-Line Discussions.	250	1	10/60	42
	Briefing Materials	250	1	10/60	42
	On-Line Questionnaire	950	2	30/60	950
Total					2,034

Date: May 4, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–11060 Filed 5–7–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–10–0743]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Assessment and Monitoring of Breastfeeding-Related Maternity Care Practices in Intra-partum Care Facilities in the United States and Territories (OMB Control No. 0920–0743, Exp. 10/31/2010)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Substantial evidence demonstrates the health benefits of breastfeeding. Breastfeeding mothers have lower risks of breast and ovarian cancers and type 2 diabetes, and breastfeeding better protects infants against infections, chronic diseases like diabetes and obesity, and even childhood leukemia and sudden infant death syndrome (SIDS). However, the groups that are at higher risk for diabetes, obesity, and poor health overall persistently have the lowest breastfeeding rates.

Health professionals recommend at least 12 months of breastfeeding, and Healthy People 2010 establishes specific national breastfeeding goals. In addition to increasing overall rates, a significant public health priority in the U.S. is to reduce variation in breastfeeding rates across population subgroups. For example, in 2005, nearly three-quarters of white mothers started breastfeeding, but only about half of black mothers did so.

The health care system is one of the most important and effective settings to improve breastfeeding. In 2007, CDC conducted the first national survey of Maternity Practices in Infant Nutrition and Care (known as the mPINC Survey) in health care facilities (hospitals and free-standing childbirth centers). This survey was designed to provide baseline information and to be repeated every two years. The survey was conducted again in 2009. The survey inquired about patient education and support for breastfeeding throughout the maternity stay as well as staff training and maternity care policies.

Prior to the fielding of the 2009 iteration, CDC was requested to provide a report to OMB on the results of the 2007 collection. In this report, CDC provided survey results by geographic and demographic characteristics and a summary of activities that resulted from the survey.

Because the 2011 mPINC survey repeats the prior iterations (2007 and 2009), the methodology, content, and administration of it will match those used before. The census design does not employ sampling methods. Facilities are identified by using the American Association of Birth Centers (AABC) and the American Hospital Association (AHA) Annual Survey of Hospitals. In addition to all facilities that participated in 2007 or 2009, the 2011 survey will include those that were invited but did not participate in 2007 or 2009 and any that are new since then. All birth centers and hospitals with ≥1 registered maternity bed will be screened via a brief phone call to assess their eligibility, identify additional locations, and identify the appropriate point of contact. The extremely high response rates to the 2007 mPINC survey of 82 percent and 81 percent to the 2009 iteration indicate that the methodology is appropriate and also reflects unusually high interest among the study population.

As with the initial surveys, a major goal of the 2011 follow-up survey is to be fully responsive to their needs for information and technical assistance. CDC will provide direct feedback to respondents in a customized benchmark report of their results and identify and document progress since 2007 on their quality improvement efforts. National and state reports will use de-identified data to describe incremental changes in practices and care processes over time at the facility, state, and national levels.

Participation in the survey is voluntary, and responses may be submitted by mail or through a Web-based system. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
AHA and AABC Facilities with either ≥1 birth or ≥1 registered maternity bed.	Screening call	4,089	1	5/60	341
	2011 mPINC	3,281	1	30/60	1,641
Total					1,982

Dated: May 4, 2010.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–11056 Filed 5–7–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; The Framingham Heart Study (FHS)

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: The Framingham Heart Study. *Type of Information Request:* Revision (OMB No. 0925–0216). *Need and Use of Information Collection:* The Framingham Heart Study will conduct examinations and morbidity and mortality follow-up for the purpose of studying the determinants of cardiovascular disease. Examinations will be conducted on the original,

offspring, and Omni Cohorts. Morbidity and mortality follow-up will also occur in all of the cohorts (original, offspring, third generation, and Omni). *Frequency of response:* The participants will be contacted annually. *Affected public:* Individuals or households; businesses or other for profit; small businesses or organizations. *Types of Respondents:* Adult men and women; doctors and staff of hospitals and nursing homes. The annual reporting burden is as follows:

Estimated Number of Respondents: 6,921; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .88; and *Estimated Total Annual Burden Hours Requested:* 6,091. *The annualized cost to respondents is estimated at:* $222,040. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

There are no capital, operating, or maintenance costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Individuals (Participants and Informants)	4461	1	1.00	4442
Physicians	2460	1	0.67	1649
Totals	6921			6091

(**Note:** reported and calculated numbers differ slightly due to rounding.)

Request For Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) 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) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of data collection plans and instruments, contact Dr. Gina Wei, Division of Cardiovascular Sciences, NHLBI, NIH, Two Rockledge Center, 6701 Rockledge Drive, MSC 7936, Bethesda, MD, 20892–7936, or call non-toll-free number (301) 435–0456, or e-mail your request, including your address to: *weig@nhlbi.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: April 28, 2010.

Suzanne Freeman,

NHLBI Project Clearance Liaison, National Institutes of Health.

Michael Lauer,

Director, DCVS, National Institutes of Health.

[FR Doc. 2010–10951 Filed 5–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Lost People Finder System

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Library of Medicine (NLM), 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 February 8, 2010 (Vol. 75, No. 25, p. 6207) and allowed 60 days for public comment. No public comments were received. 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: Lost People Finder System, *Type of Information Collection Request:* Extension of currently approved collection [OMB No. 0925–0612, expiration date 07/31/2010], *Form Number:* NA; *Need and Use of Information Collection:* The National Library of Medicine (NLM) proposes the continuation of a voluntary collection of information to assist in the reunification of family members and loved ones who are separated during a disaster. Reunification is important to both the emotional well-being of people injured during a disaster and to their medical care. Family members often provide important health information to care providers who are treating the injured (*e.g.,* providing medical history or information about allergies) and they may provide longer-term care for those released from emergency care. NLM proposes this data collection as part of its mission to develop and coordinate communication technologies to improve the delivery of health services. The data collection is authorized pursuant to sections 301, 307, 465 and 478A of the Public Health Service Act [42 U.S.C. 241, 242l, 286 and 286d]. NLM is a member of the Bethesda Hospitals' Emergency Preparedness Partnership (BHEPP), which was established in 2004 to improve community disaster preparedness and response among hospitals in Bethesda, Maryland that would likely be called upon to absorb mass casualties in a major disaster in the National Capital Region. BHEPP hospitals include the National Naval Medical Center (NNMC), the National Institutes of Health Clinical Center (NIH CC), and Suburban Hospital/Johns Hopkins Medicine. NLM, with its expertise in communications, information management, and medical informatics joined BHEPP to coordinate the R&D program, one element of which is development of a lost person finder to assist in family reunification after a disaster. The system could be deployed not only during a disaster in the

National Capitol Area, but during other disasters that involve a Federal Government response. NLM's Lost People Finder System would collect information, on a voluntary basis, about people who are missing and who are found (recovered) during a disaster. Information on recovered individuals would be gathered voluntarily from medical and relief personnel who either use specialized applications developed by NLM for smart mobile computing and communications devices, such as the iPhone, iPad, Android, or BlackBerry, or submit information to NLM by email via computer or cell phone. The iPhone application developed by NLM enables submission of photographs and descriptive information about found (recovered) victims in a structured format, *e.g.,* name (if available), age category and/or range, gender, general status (healthy, injured), location. Text notes and voice notes that might identify the speaker (victim, or relief workers assisting in the reunification efforts) could also be submitted. Information about missing persons would be submitted by members of the public who are seeking family members, friends, and other loved ones, or could be provided by relief aid workers assisting in reunification efforts. An interactive Web-based system offers the public a tool for searching for people who have been found (*e.g.,* recovered by medical staff and other relief workers) and for voluntarily posting information about people who are still missing. In addition, the system would collect information on a regular basis from other publicly available systems that are used for reunification during a disaster for information (*e.g.,* the Google Person Finder system that was deployed during the 2010 earthquakes in Haiti). Information submitted directly to NLM's Lost People Finder System would be transferred to other systems that are endorsed by U.S. Government agencies to ensure that users of such systems can search the complete set of available information for their family members and loved ones and to ensure that use of the NLM system in no way interrupts or distracts from the operation or use of other person finder systems. NLM would also use the data to evaluate the functioning and utility of the lost person finder and guide future enhancements to the system. *Frequency of Response:* The NLM Lost People Finder would be activated only during disasters or emergencies in which U.S. Government agencies are called to contribute to relief efforts. It would operate until cessation of relief efforts. During this period of time, information on found persons would be submitted by first-responders, medical, and other relief personnel on an ad-hoc basis, possibly several times per day. Information about missing persons would be submitted voluntarily by members of the public *(i.e.,* those who are seeking family members, friends, and other loved ones) on an ad hoc basis, once or twice during the disaster. *Affected Public:* Individuals or households. *Type of Respondents:* Emergency Care First-Responders, Physicians, and Other Health Care Providers who have found (recovered) people, and family members seeking a missing person. *Estimate of burden:* The annual reporting burden is as follows: The estimated burden consists of the burden to emergency responders (care providers, relief workers) of voluntarily entering data into the system about found people and of family members voluntarily entering data to list a missing person and/or search for possible matches. The burden may vary significantly from one disaster to another, depending upon the number of people affected, and the annualized burden would vary, depending upon the number of disasters that occur. Using the 2010 earthquake in Haiti as a model, we estimate that some 500 emergency responders might use the system during the course of the relief effort and that each might submit information on 100 people. Submission of information, especially through the iPhone application, is very fast and is estimated to average not more than 5 minutes per entry. The number of family members entering information about a missing person could be much higher. Based on use of the Google Person Finder system during the Haiti earthquake (which contained information on 55,000 people as of April 2010, most of whom were missing people), we estimate that some 50,000 family members might use the system twice during a disaster. Data entry would average no more than 5 minutes. Based on these estimates, the total hour burden is calculated to be 12,000 hours. All use of the system is voluntary. Improved estimates of the burden, in particular the number of respondents and frequency of response, could be provided after the initial use of the system in Haiti.

Types of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Emergency Care First-Responders, Physicians, Other Health Care Providers	500	100	0.08	4,000
Family members seeking a missing person	50,000	2	0.08	8,000
Total	50,500			12,000

The annualized cost to respondents for each year of the clearance is estimated to be $293,120.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request For Comments: Written comments and/or suggestions from the public and affected agencies 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: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk

Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: David Sharlip, National Library of Medicine, Building 38A, Room B2N12, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll free number 301–402–9680 or e-mail your request to *sharlipd@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: April 30, 2010.

Betsy L. Humphreys,

Deputy Director, National Library of Medicine, National Institutes of Health.

[FR Doc. 2010–10950 Filed 5–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Community Services Block Grant (CSBG) Program Model Plan Application.

OMB No.: New Collection.

Description: Sections 676 and 677 of the Community Services Block Grant Act require States, including the District of Columbia and the Commonwealth of Puerto Rico, Tribes, Tribal organizations and U.S. territories applying for Community Services Block Grant (CSBG) funds to submit an application and plan (Model Application Plan). The application plan must meet statutory requirements prior to being funded with CSBG funds. Applicants have the option to submit a detailed application annually or biannually. Entities that submit a biannual application must provide an abbreviated application the following year if substantial changes to the initial application will occur. OMB approval is being sought.

Respondents: State Governments, including the District of Columbia and the Commonwealth of Puerto Rico, Tribal Governments, Tribal Organizations, and U.S. territories.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Model State CSBG Application	56	1	10	560
Model Indian Tribes & Tribal Organizations CSBG Application	30	1	10	300

Estimated Total Annual Burden Hours: 860

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Dated: May 4, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–10933 Filed 5–7–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program (NTP); NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Federal Agency Responses to Interagency Coordinating Committee on the Validation of Alternative Methods Recommendations on the Murine Local Lymph Node Assay, An Alternative Test Method for Assessing the Allergic Contact Dermatitis Potential of Chemicals and Products: Notice of Availability

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Notice of Availability.

SUMMARY: U.S. Federal agency responses to Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) test method recommendations on the murine local lymph node assay (LLNA), an alternative safety testing method used to assess the potential of chemicals and products to cause allergic contact dermatitis (ACD), are now available. ICCVAM recommended an updated LLNA test method protocol, a reduced LLNA procedure (rLLNA), and LLNA test method performance standards. In accordance with the ICCVAM Authorization Act, ICCVAM previously forwarded recommendations to Federal agencies and made these recommendations available to the public (74 FR 50212). Agencies have now notified ICCVAM in writing of their findings and ICCVAM is making these responses available to the public. Federal agency responses are available on the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov/methods/immunotox/rLLNA.htm* and *http://iccvam.niehs.nih.gov/methods/immunotox/llna_PerfStds.htm.* The ICCVAM recommendations are provided in ICCVAM Test Method Evaluation Reports, which are available on the NICEATM–ICCVAM Web site at *http://iccvam.niehs.nih.gov/methods/immunotox/LLNA–LD/TMER.htm* and *http://iccvam.niehs.nih.gov/methods/immunotox/PerfStds/llna-ps.htm.*

FOR FURTHER INFORMATION CONTACT: Dr. William S. Stokes, Director, NICEATM, NIEHS, P.O. Box 12233, Mail Stop: K2–16, Research Triangle Park, NC, 27709, (telephone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov.* Courier address: NICEATM, NIEHS, Room 2034, 530 Davis Drive, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background

ICCVAM originally recommended the LLNA as a valid stand-alone alternative method to existing ACD test methods in 1999 (NIH publication No. 99–4494; available at *http://iccvam.niehs.nih.gov/docs/immunotox_docs/llna/llnarep.pdf*). ICCVAM recommended that the LLNA could be used as a substitute for the existing guinea pig based test methods for most testing situations, which would reduce the number of animals required and avoid pain and distress. The Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), and the Consumer Product Safety Commission (CPSC) subsequently accepted the method as a valid substitute. The Organization for Economic Co-operation and Development (OECD) adopted the LLNA as international OECD Test Guideline 429 and the International Standards Organization (ISO) adopted the LLNA as ISO Test 10993–10.

The updated LLNA test method protocol uses 20% fewer animals than the original LLNA protocol recommended by ICCVAM in 1999, and provides improved guidance on dose selection and other procedures to improve assay accuracy and reproducibility. The rLLNA procedure can further reduce the number of animals required by 40% compared to the updated LLNA protocol multi-dose procedure. ICCVAM recommends that the rLLNA test method should be routinely considered before conducting the traditional multi-dose LLNA, and should be used as the initial test for ACD where determined appropriate. ICCVAM evaluation and complete recommendations for the updated LLNA test method protocol and the rLLNA procedure are provided in the *ICCVAM Test Method Evaluation Report: The Reduced Murine Local Lymph Node Assay: An Alternative Test Method Using Fewer Animals to Assess the Allergic Contact Dermatitis Potential of Chemicals and Products* (NIH Publication No. 09–6439, available at *http://iccvam.niehs.nih.gov/methods/immunotox/LLNA–LD/TMER.htm*).

ICCVAM also recommends that the LLNA test method performance standards can be used to efficiently evaluate the validity of modified test methods that are mechanistically and functionally similar to the traditional LLNA. The LLNA test method performance standards are provided in the ICCVAM report, *Recommended Performance Standards: Murine Local Lymph Node Assay* (NIH Publication No. 09–7357, available at *http://iccvam.niehs.nih.gov/methods/immunotox/PerfStds/llna-ps.htm*).

ICCVAM evaluated the updated versions of the LLNA in response to a 2007 nomination from the CPSC (*http://iccvam.niehs.nih.gov/methods/immunotox/llnadocs/CPSC_LLNA_nom.pdf*). The nomination also requested that ICCVAM evaluate the validation status of (1) new versions of the LLNA test method protocol that do not require the use of radioactive materials; (2) use of the LLNA to test mixtures, aqueous solutions, metals, and other substances; and (3) use of the LLNA to determine ACD potency categories for hazard classification and labeling purposes. ICCVAM recommendations on these new versions and applications are undergoing finalization and will be forwarded to Federal agencies in 2010.

Agency Reponses to ICCVAM Recommendations

In September 2009, ICCVAM forwarded final test method recommendations for the rLLNA, the updated LLNA test method protocol, and LLNA performance standards to U.S. Federal agencies for consideration, in accordance with the ICCVAM Authorization Act of 2000 (42 U.S.C. 285l–3(e)(4)) (74 FR 50212). The ICCVAM Authorization Act requires member agencies to review ICCVAM test method recommendations and notify ICCVAM in writing of their findings no later than 180 days after receipt of recommendations. The Act also requires ICCVAM to make ICCVAM recommendations and agency responses available to the public. Agency responses are to include identification of relevant test methods for which the ICCVAM test method recommendations may be added or substituted, and indicate any revisions or planned revisions to existing guidelines, guidances, or regulations to be made in response to these recommendations.

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use, generate, or disseminate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological test methods that more accurately assess the safety and hazards of chemicals and products and that refine, reduce, and replace animal use. The ICCVAM Authorization Act of 2000 established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of U.S. Federal agencies. Additional information about ICCVAM and NICEATM can be found on their Web site (*http://www.iccvam.niehs.nih.gov).*

Dated: April 30, 2010.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2010–10954 Filed 5–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM): International Workshop on Alternative Methods To Reduce, Refine, and Replace the Use of Animals in Vaccine Potency and Safety Testing: State of the Science and Future Directions

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH), Department of Health and Human Services.

ACTION: Announcement of a workshop.

SUMMARY: The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) and NICEATM announce an upcoming "International Workshop on Alternative Methods to Reduce, Refine, and Replace the Use of Animals in Vaccine Potency and Safety Testing: State of the Science and Future Directions." The workshop will bring together an international group of scientific experts from government, industry, and academia to review the current state of the science, availability, and future need for alternative methods that can reduce, refine, and replace the use of animals for human and veterinary vaccine post-licensing potency and safety testing. Plenary and breakout sessions will address current U.S. and international regulatory requirements, currently available alternatives, and future research, development, and validation activities needed to further advance the use of alternative methods for vaccine post-licensing potency and safety testing. This workshop is free and open

to the public with attendance limited only by the space available. Abstracts for scientific posters for display at the workshop are also invited (*see* **SUPPLEMENTARY INFORMATION**).

DATES: The workshop will be held on September 14–16, 2010. Sessions will begin at 8:30 a.m. and end at approximately 5 p.m. on all days. The deadline for submission of poster abstracts is July 29, 2010. Individuals who plan to attend are asked to register in advance (by August 30, 2010) with NICEATM.

ADDRESSES: The workshop will be held at the William H. Natcher Conference Center, 45 Center Drive, NIH Campus, Bethesda, MD 20892. Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, should contact 919–541–2475 voice, 919–541–4644 TTY (text telephone), through the Federal TTY Relay System at 800–877–8339, or e-mail to *niehsoeeo@niehs.nih.gov.* Requests should be made at least 14 days in advance of the event.

FOR FURTHER INFORMATION CONTACT: Correspondence should be sent by mail, fax, or e-mail to Dr. William S. Stokes, NICEATM Director, NIEHS, P.O. Box 12233, MD K2–16, Research Triangle Park, NC 27709, (phone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Background

Vaccines represent a vital and cost-effective tool in the prevention of infectious diseases in humans and animals. Regulatory authorities require post-licensing potency and safety testing of human and veterinary vaccines to ensure their effectiveness and minimize potential adverse health effects. Because some of these tests require large numbers of laboratory animals that may experience unrelieved pain and distress, the development and validation of alternative methods that can reduce, refine, and replace the use of animals for vaccine potency and safety testing is one of ICCVAM's four highest priorities. The workshop goals are to (1) review the state of the science of alternative methods that are currently available and/or accepted for use that can reduce, refine (less pain and distress), and replace animal use in vaccine potency and safety testing, and discuss ways to promote their implementation; (2) identify knowledge and data gaps that should be addressed to develop alternative methods that can further reduce, refine, and/or replace the use of animals in vaccine potency and safety testing; and (3) identify and prioritize research, development, and validation efforts needed to address these knowledge and data gaps in order to advance alternative methods for vaccine potency and safety testing while ensuring the protection of human and animal health.

Preliminary Workshop Agenda

Day 1 Tuesday, September 14, 2010

- Welcome and Introduction of Workshop Goals and Objectives
- Overview of Public Health Needs and Regulatory Requirements for Vaccine Safety and Potency Testing
- Replacement Methods for Vaccine Potency Testing: Current State of the Science
- Breakout Groups: Non-animal Replacement Methods for Vaccine Potency Testing
- Human Vaccines
- Veterinary Vaccines

Day 2 Wednesday, September 15, 2010

- Refinement Alternatives: Using Serological Methods to Avoid Challenge Testing
- Refinement Alternatives: Using Earlier Humane Endpoints to Avoid or Minimize Animal Pain and Distress in Vaccine Potency Challenge Testing
- Reduction Alternatives: Strategies to Further Reduce Animal Numbers for Vaccine Potency Testing
- Breakout Groups: Refinement and Reduction of Animal Use for Vaccine Potency Testing
  - Human Vaccines
  - Veterinary Vaccines

Day 3 Thursday, September 16, 2010

- Vaccine Post-licensing Safety Testing: Reduction, Refinement and Replacement Methods and Strategies
- Breakout Groups: Post-license Vaccine Safety Testing: Alternative Strategies for the Replacement, Refinement, and Reduction of Animals
  - Human Vaccines
  - Veterinary Vaccines
- Closing Comments

Registration

Registration information, tentative agenda, and additional meeting information are available on the workshop Web site (*http://iccvam.niehs.nih.gov/meetings/BiologicsWksp-2010/BiologicsWksp.htm*) and upon request from NICEATM (*see* **FOR FURTHER INFORMATION CONTACT**).

Call for Abstracts

ICCVAM and NICEATM invite the submission of abstracts for scientific posters to be displayed during this workshop. Posters should address current research, development, validation, and/or regulatory acceptance of alternative methods that may reduce, refine, and/or replace the use of animals in vaccine potency or vaccine post-licensing safety testing. The body of the abstract must be limited to 400 words or fewer. Key references relevant to the abstract may be included after the abstract body. However, the length of the abstract and references should not exceed one page. All submissions should be at least 12-point font and all margins for the document should be no less than one inch. Title information should include names of all authors and associated institutions. The name and contact information (*i.e.,* address, phone number, fax number, e-mail address) for the corresponding or senior author should be provided at the end of the abstract.

A statement indicating whether animals or humans were used in studies described in the poster must accompany all abstracts. All abstracts that involve studies using animals or animal tissues should be accompanied by a statement by the senior author certifying that all animal use was carried out in accordance with applicable laws, regulations, and guidelines, and that the studies were approved by the appropriate Institutional Animal Care and Use Committee or equivalent. A statement that all human studies were conducted in accordance with applicable laws, regulations, and guidelines, and that the studies were approved by the appropriate Institutional Review Board or equivalent must accompany any abstracts that involve studies using humans.

Abstracts must be submitted by e-mail to *niceatm@niehs.nih.gov.* The deadline for abstract submission is close of business on July 29, 2010. ICCVAM and NICEATM will review the submitted abstracts. The corresponding author will be notified of the abstract's acceptance approximately five weeks prior to the workshop. Guidelines for poster presentations will be sent to corresponding authors along with the notification of acceptance.

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 U.S. Federal regulatory and research agencies that require, use, or generate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability, and promotes the scientific validation and regulatory acceptance of toxicological test methods

that more accurately assess the safety and health hazards of chemicals and products and that refine (less pain and distress), reduce, or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 2851–2, 2851–5 [2000]), available at *http://iccvam.niehs.nih.gov/about/PL106545.htm*) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM. NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and coordinates international validation studies. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of U.S. Federal agencies. Additional information about ICCVAM and NICEATM, guidelines for nomination of test methods for validation studies, and guidelines for submission of test methods for ICCVAM evaluation are available at *http://iccvam.niehs.nih.gov.*

Dated: April 30, 2010.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2010–10958 Filed 5–7–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0233]

The National Institutes of Health and the Food and Drug Administration Joint Leadership Council: Stakeholders Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting, in conjunction with the National Institutes of Health (NIH), to solicit comments from interested persons on how the agencies can more effectively collaborate to advance the translation of biomedical research discoveries into approved diagnostics and therapies as well as promote science to enhance the evaluation tools used for regulatory review. A newly formed NIH–FDA Joint Leadership Council will help ensure that regulatory considerations form an increasing component of biomedical research planning, and that the latest science is integrated into the regulatory review process.

DATES: The public meeting will be held on June 2, 2010, from 8:30 a.m. to 12:30 p.m. Persons interested in attending the meeting must register by Wednesday, May 26, 2010, at 5 p.m. e.s.t. (see section III of this document). Submit written or electronic comments by Wednesday, May 26, 2010, at 5 p.m. e.s.t.

ADDRESSES: The public meeting will be held at FDA, 10903 New Hampshire Ave., Bldg. 31, rm. 1503C, Silver Spring, MD 20993–0002.

Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. All comments should be identified with the docket number found in brackets at the heading of this document.

FOR FURTHER INFORMATION CONTACT: Rakesh Raghuwanshi, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4283, Silver Spring, MD 20993–0002, 301–796–4769, FAX: 301–847–8617, e-mail: *rakesh.raghuwanshi@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

With the dramatic breakthroughs occurring in biomedical research discovery, new public health challenges on the rise, an ever-changing economic landscape resulting from globalization, and the prospect for fundamental changes to healthcare delivery in the United States, there is a pressing need for greater collaboration between FDA and NIH. Both NIH and FDA have the goals of translating science discoveries into medical products and therapies, and both NIH and FDA have important roles and contributions to make towards these efforts. To address these important areas of common interest, NIH and FDA announced a new partnership effort that includes, among other initiatives, the regulatory science program and the NIH–FDA Joint Leadership Council.

The NIH–FDA Joint Leadership Council provides a forum for the leadership of both agencies to: (1) Work together on strategic planning at a high level; (2) stimulate an enhanced culture of collaboration between the agencies at all levels; and (3) further coordinate and target efforts to promote promising new therapies using the latest technological advances, such as stem cell biology, biomarkers, and computational sciences. NIH and FDA plan to work jointly to address the gap between biomedical research discoveries and new medical products. They can create new programs to support development of innovative therapies and promote personalized medicine, utilizing new clinical trial design strategies and regulatory review processes incorporating the use of genetic or other biomarkers and information technologies. These activities will also support postmarketing and/or other population-based surveys for safety assessments. Overall, there are many new avenues for NIH and FDA to explore such that we can deliver safer and more effective treatments faster.

II. Scope of the Meeting

FDA and NIH are interested in receiving comments from the public on the regulatory considerations that should be an integral part of the biomedical research program development and scientific tools or approaches that would enhance the ability to evaluate new medical products. The comments should focus on ways in which NIH and FDA can partner to promote interdisciplinary biomedical research through scientific exchange and new programs designed to advance innovation and development of new therapies incorporating many of the latest basic research discoveries. Suggestions about the ways FDA and NIH can work together to promote an integrated biomedical research agenda including regulatory review approaches and/or processes on areas of common interest and mission are being sought. Some areas for which we are specifically interested in input are the following:

1. What steps should be taken to enhance the translation of biomedical research discoveries into new and approved preventatives, diagnostics, therapies, or devices for clinical use?
2. What are the priority scientific issues that currently need to be addressed (e.g., clinical trial design, endpoint selection and qualification, bioinformatics needs) in order to inform regulatory assessments and analyses of new products?
3. How could we enhance the exchange of scientific information across all sectors in order to better identify and prioritize scientific areas for emphasis in regulatory research?
4. What mechanisms for the support of regulatory science research would be most effective and efficient in addressing pressing priority areas in the translational pipeline?

III. Registration To Attend and/or To Participate in the Meeting

If you wish to attend the public meeting, you must register by e-mailing Rakesh Raghuwanshi

(*rakesh.raghuwanshi@fda.hhs.gov*) by Wednesday, May 26, 2010, at 5 p.m. e.s.t. When registering, you must provide the following information: (1) Your name, (2) title, (3) company or organization (if applicable), (4) mailing address, (5) telephone number, and (6) e-mail address. If you wish to make a presentation, when you register, indicate the specific topic or issue to be addressed in your presentation. We will do our best to accommodate all persons who wish to make a presentation at the meeting. FDA and NIH encourage persons and groups having similar interests to consolidate their information for presentation through a single representative. After reviewing the requests to present, we will contact each participant prior to the meeting with the amount of time available and the approximate time the participant's presentation is scheduled to begin. Presenters must then send the final electronic copies of their presentations in Microsoft PowerPoint, Microsoft Word, or Adobe Portable Document to Format (PDF) to Rakesh Raghuwanshi (*rakesh.raghuwanshi@fda.hhs.gov*) by Monday, May 31, 2010, at 12 noon e.s.t.

There is no fee to register for the public meeting and registration will be on a first-come, first-served basis. Early registration is recommended because seating is limited. Registration on the day of the public meeting will be permitted on a space available basis beginning at 8 a.m.

If you need special accommodations due to a disability, please inform the meeting contact (see **FOR FURTHER INFORMATION CONTACT**) by Wednesday, May 26, 2010, at 5 p.m. e.s.t.

IV. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Transcripts

Transcripts of the meeting will be available for review approximately 30 days after the meeting at *http://www.regulations.gov* and at the Division of Dockets Management (see **ADDRESSES**). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: May 5, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–11008 Filed 5–7–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors (BSC), National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR)

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC and BSC, NCEH/ATSDR announces the following meeting of the aforementioned committee:

Times and Dates: 8:30 a.m.–6 p.m., May 27, 2010. 8 a.m.–2 p.m., May 28, 2010.

Place: Centers for Disease Control and Prevention, 4770 Buford Highway, Chamblee, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people. The public comment period is scheduled for Friday, May 28, 2010 from 8:45 a.m. until 9 a.m.

Purpose: The Secretary, Department of Health and Human Services (HHS) and by delegation, the Director, CDC and Administrator, NCEH/ATSDR, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist States and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and well being; and (3) train State and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and priorities in fulfillment of the agency's mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board also provides guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Matters To Be Discussed: The agenda will include an update on NCEH/ATSDR's Office of the Director; an overview of the Division of Laboratory Sciences (DLS); a presentation of DLS programs to the BSC peer review breakout groups; a presentation by the BSC peer review breakout groups of the key findings of DLS programs and activities; discussion of outstanding BSC Issues; Program Response to BSC Program Peer Review by NCEH/ATSDR Division of Emergency and Environmental Health Services (EHHE); an overview of the Division of Environmental Hazards and Health Effects; and presentations by EHHE Branches.

Agenda items are tentative and subject to change.

Contact Person for More Information: Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, 4770 Buford Highway, Mail Stop F–61, Chamblee, Georgia 30341; telephone 770/488–0575, Fax 770/488–3377; E-mail: *smalcom@cdc.gov.* The deadline for notification of attendance is May 25, 2010.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 4, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–10971 Filed 5–7–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2010–0035]

DHS Data Privacy and Integrity Advisory Committee

AGENCY: Privacy Office, DHS.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DHS Data Privacy and Integrity Advisory Committee will meet on May 25, 2010, in Washington, DC. The meeting will be open to the public.

DATES: The DHS Data Privacy and Integrity Advisory Committee will meet on Tuesday, May 25, 2010, from 12:30 p.m. to 5 p.m. Please note that the meeting may end early if the Committee has completed its business.

ADDRESSES: The meeting will be held in Harding Hall, US Government Printing Office, 710 North Capitol Street, NW. (US Government Bookstore entrance, corner of G Street, NW.), Washington, DC 20401. Written materials, requests to make oral presentations, and requests to have a copy of your materials distributed to each member of the Committee prior to the meeting should be sent to Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, by May 18, 2010. Persons who wish to submit comments and who are not able to attend or speak at the meeting may submit comments at any time. All submissions must include the Docket Number (DHS–2010–0035) and may be submitted by any *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: PrivacyCommittee@dhs.gov.* Include the Docket Number (DHS–2010–0035) in the subject line of the message.
- *Fax:* (703) 483–2999.
- *Mail:* Martha K. Landesberg, Executive Director, Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions must include the words "Department of Homeland Security Data Privacy and Integrity Advisory Committee" and the Docket Number (DHS–2010–0035). Comments will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the DHS Data Privacy and Integrity Advisory Committee, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, Department of Homeland Security, Washington, DC 20528, by telephone (703) 235–0780, by fax (703) 235–0442, or by e-mail to *PrivacyCommittee@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (Pub. L. 92–463). During the meeting, the Chief Privacy Officer will provide the DHS Data Privacy and Integrity Advisory Committee an update on the activities of the DHS Privacy Office. The Committee will also hear presentations on information sharing governance within DHS, on DHS Immigration and Customs Enforcement (ICE) implementation of DHS privacy policy, and on the development of the National Strategy for Secure Online Transactions. The agenda will be posted in advance of the meeting on the Committee's Web site at *http://www.dhs.gov/privacy.* Please note that the meeting may end early if all business is completed.

If you wish to attend the meeting, please plan to arrive at Harding Hall by 12:15 p.m., to allow extra time to be processed through security, and bring a photo ID. The DHS Privacy Office encourages you to register for the meeting in advance by contacting Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, at *PrivacyCommittee@dhs.gov.* Advance registration is voluntary. The Privacy Act Statement below explains how DHS uses the registration information you may provide and how you may access or correct information retained by DHS, if any.

At the discretion of the Chair, members of the public may make brief (*i.e.,* no more than three minutes) oral presentations from 4:30 p.m. to 5 p.m. If you would like to make an oral presentation at the meeting, we request that you register in advance or sign up on the day of the meeting. The names and affiliations, if any, of individuals who address the Committee are included in the public record of the meeting. If you wish to provide written materials to be distributed to each member of the Committee in advance of the meeting, please submit them, preferably in electronic form to facilitate distribution, to Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, by May 18, 2010.

Information on Services for Individuals With Disabilities

For information on services for individuals with disabilities or to request special assistance, contact Martha K. Landesberg, Executive Director, DHS Data Privacy and Integrity Advisory Committee, as soon as possible.

Privacy Act Statement: DHS's Use of Your Information

Principal Purposes: When you register to attend a DHS Data Privacy and Integrity Advisory Committee meeting, DHS collects your name, contact information, and the organization you represent, if any. We use this information to contact you for purposes related to the meeting, such as to confirm your registration, to advise you of any changes in the meeting, or to assure that we have sufficient materials to distribute to all attendees. We may also use the information you provide for public record purposes such as posting publicly available transcripts and meeting minutes.

Routine Uses and Sharing: In general, DHS will not use the information you provide for any purpose other than the Principal Purposes, and will not share this information within or outside the agency. In certain circumstances, DHS may share this information on a case-by-case basis as required by law or as necessary for a specific purpose, as described in the DHS Mailing and Other Lists System of Records Notice, DHS/ALL–002 (73 FR 71659).

DHS Authority to Collect This Information: DHS requests that you voluntarily submit this information under its following authorities: 5 U.S.C. 301; the Federal Records Act, 44 U.S.C. 3101; FACA, 5 U.S.C. App. (Pub. L. 92–463); 5 U.S.C., App. 2 Sec. 10; E.O. 9397; 14 U.S.C. 632; The Omnibus Budget Reconciliation Act of 1987, Pub. L. 101–103, Section 9503(c), 101 Stat. 1330, 1330–381 (1987) (codified at 19 U.S.C. 2071 note).

Effects of Not Providing Information: You may choose not to provide the requested information or to provide only some of the information DHS requests. If you choose not to provide some or all of the requested information, DHS may not be able to contact you for purposes related to the meeting.

Accessing and Correcting Information: If you are unable to access or correct this information by using the method that you originally used to submit it, you may direct your request in writing to the DHS Deputy Chief FOIA Officer at *foia@dhs.gov.* Additional instructions are available at *http://www.dhs.gov/foia* and in the DHS/ALL–002 System of Records Notice referenced above.

Dated: May 3, 2010.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–10857 Filed 5–7–10; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0316]

National Boating Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Boating Safety Advisory Council (NBSAC). This Council advises the Coast Guard on recreational boating safety regulations and other major boating safety matters.

DATES: Completed application forms should reach us on or before July 9, 2010.

ADDRESSES: Application forms are available:

(1) For download on the Advisory Committee's Web site at *http://homeport.uscg.mil/NBSAC.* Look for the NBSAC Application under "General Information;"

(2) By writing to Commandant (CG–5422)/NBSAC, U.S. Coast Guard, 2100 Second St. SW., STOP 7581, Washington, DC 20593–7581; calling 202–372–1061; or e-mailing *jeffrey.a.ludwig@uscg.mil;* and

(3) In our online docket, USCG–2010–0316, at *http://www.regulations.gov.*

Send your completed application to Jeff Ludwig, the Alternate Designated Federal Officer (ADFO), at the street address above.

FOR FURTHER INFORMATION CONTACT: Jeff Ludwig, ADFO of National Boating Safety Advisory Committee; telephone 202–372–1061; fax 202–372–1908; or e-mail at *jeffrey.a.ludwig @uscg.mil.*

SUPPLEMENTARY INFORMATION:

The National Boating Safety Advisory Council ("NBSAC") is a Federal advisory committee under 5 U.S.C. App. (Pub. L. 92–463). It was established under authority of 46 U.S.C. 13110 and advises the Coast Guard on boating safety regulations and other major boating safety matters. NBSAC has 21 members: Seven representatives of State officials responsible for State boating safety programs, seven representatives of recreational boat manufacturers and associated equipment manufacturers, and seven representatives of national recreational boating organizations and the general public. Members are appointed by the Secretary of the Department of Homeland Security.

The Council meets at least twice each year at a location selected by the Coast Guard. It may also meet for extraordinary purposes. Subcommittees or working groups may also meet to consider specific problems.

We will consider applications for seven positions that expire or become vacant on December 31, 2010:

- Two representatives of State officials responsible for State boating safety programs;
- Three representatives of recreational boat and associated equipment manufacturers; and
- Two representatives of the general public or national recreational boating organizations.

Applicants are considered for membership on the basis of their particular expertise, knowledge, and experience in recreational boating safety. Applicants for the 2010 vacancies announced in the **Federal Register** on May 12, 2009, (74 FR 22174) will be considered for the 2011 vacancies and do not need to submit another application. Applicants for years prior to 2010 should submit an updated application to ensure consideration for the vacancies announced in this notice.

To be eligible, you should have experience in one of the categories listed above. Registered lobbyists are not eligible to serve on Federal advisory committees. Registered lobbyists are lobbyists required to comply with provisions contained in the Lobbying Disclosure Act of 1995 (Pub. L. 110–81, as amended). Each member serves for a term of three years. Members may be considered to serve consecutive terms. All members serve at their own expense and receive no salary, or other compensation from the Federal Government. The exception to this policy is when attending NBSAC meetings, members are reimbursed for travel expenses and provided per diem in accordance with Federal Travel Regulations.

In support of the policy of the Coast Guard on gender and ethnic nondiscrimination, we encourage qualified men and women and members of all racial and ethnic groups to apply. The Coast Guard values diversity; all the different characteristics and attributes of persons that enhance the mission of the Coast Guard.

If you are selected as a member who represents the general public, you will be appointed and serve as a special Government employee (SGE) as defined in section 202(a) of title 18, United States Code. As a candidate for appointment as a SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). A completed OGE Form 450 is not releasable to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated Agency Ethics Official or his or her designate may release a Confidential Financial Disclosure Report.

If you are interested in applying to become a member of the Committee, send a completed application to Jeff Ludwig, Alternate Designated Federal Officer (ADFO) of NBSAC at Commandant (CG–5422)/NBSAC, U.S. Coast Guard, 2100 Second St., SW., STOP 7581, Washington, DC 20593–7581. Send the application in time for it to be received by the ADFO on or before July 9, 2010. Ensure the application is signed and include the short page which allows us to maintain political affiliation on file. In addition to your "HOME ADDRESS," please include a valid e-mail address in that block. In the "TELEPHONE" block, please include a valid contact number as well as a valid FAX number if available. A copy of the application form is available in the docket for this notice. To visit our online docket, go to *http://www.regulations.gov,* enter the docket number for this notice (USCG–2010–0316) in the Search box, and click "Go."

Dated: April 29, 2010.

K.S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2010–10949 Filed 5–7–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1905–DR; Docket ID FEMA–2010–0002]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1905–DR), dated April 27, 2010, and related determinations.

DATES: *Effective Date:* April 27, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 27, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia resulting from severe winter storms and snowstorms during the period of February 5–11, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes in such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the Commonwealth. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Virginia have been designated as adversely affected by this major disaster:

The counties of Albemarle, Appomattox, Arlington, Augusta, Buckingham, Caroline, Clarke, Craig, Culpeper, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Greene, Highland, King George, Loudoun, Louisa, Madison, Nelson, Orange, Prince William, Rappahannock, Shenandoah, Spotsylvania, Stafford, Tazewell, and Warren, and the independent cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, Manassas Park, Waynesboro, and Winchester for Public Assistance.

The counties of Arlington, Augusta, Clarke, Fairfax, Fauquier, Frederick, Highland, Loudoun, Prince William, Shenandoah, Spotsylvania, Stafford, and Warren, and the independent cities of Alexandria, Fairfax, Falls Church, Manassas, Manassas Park, Waynesboro, and Winchester for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties within the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–10935 Filed 5–7–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1903–DR; Docket ID FEMA–2010–0002]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1903–DR), dated April 23, 2010, and related determinations.

DATES: *Effective Date:* April 23, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 23, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of West Virginia resulting from severe winter storms and snowstorms during the period of February 5–11, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of West Virginia have been designated as adversely affected by this major disaster:

The counties of Berkeley, Brooke, Doddridge, Hampshire, Hancock, Hardy, Jefferson, Marion, Marshall, Morgan, Ohio, Pocahontas, Preston, Ritchie, Tucker, Tyler, and Wetzel for Public Assistance.

Berkeley, Hampshire, Hardy, Jefferson, Morgan, and Pocahontas Counties for emergency protective measures, (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties within the State of West Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to

Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–10920 Filed 5–7–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1904–DR; Docket ID FEMA–2010–0002]

Connecticut; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–1904–DR), dated April 23, 2010, and related determinations.

DATES: *Effective Date:* April 23, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 23, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Connecticut resulting from severe storms and flooding beginning on March 12, 2010, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Connecticut have been designated as adversely affected by this major disaster:

Fairfield, Middlesex, and New London Counties for Public Assistance. Direct Federal assistance is authorized.

All counties within the State of Connecticut are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–10917 Filed 5–7–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1907–DR; Docket ID FEMA–2010–0002]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1907–DR), dated April 30, 2010, and related determinations.

DATES: *Effective Date:* April 30, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 30, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of North Dakota resulting from flooding beginning on February 26, 2010, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Justo Hernández, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Dakota have been designated as adversely affected by this major disaster:

Barnes, Benson, Cass, Dickey, Emmons, Foster, Grand Forks, LaMoure, Logan, Mercer, Morton, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steele, Stutsman, Traill, Walsh, and Wells Counties and the portions of the Spirit Lake Reservation that lie within these counties for Public Assistance.

All counties and Tribes within the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–10936 Filed 5–7–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1874–DR; Docket ID FEMA–2010–0002]

Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia (FEMA–1874–DR), dated February 16, 2010, and related Determinations.

DATES: *Effective Date:* May 4, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 16, 2010.

The Independent Cities of Covington, Galax, and Radford for Public Assistance.

The Independent Cities of Covington, Galax, and Radford for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–10977 Filed 5–7–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1900–DR; Docket ID FEMA–2010–0002]

Minnesota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA–1900–DR), dated April 19, 2010, and related determinations.

DATES: *Effective Date:* May 4, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 19, 2010.

Cottonwood, McLeod, Pennington, Ramsey, Red Lake, and Stevens Counties and the Prairie Island Indian Community for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–10979 Filed 5–7–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1885–DR;

Docket ID FEMA–2010–0002]

Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–1885–DR), dated March 9, 2010, and related determinations.

DATES: *Effective Date:* May 4, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 9, 2010.

Coffey, Douglas, Geary, Leavenworth, Montgomery, and Rooks Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049,

Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–10976 Filed 5–7–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUTC03000–16100000–LXSS004J0000]

Notice of Intent To Prepare Resource Management Plans for the Beaver Dam Wash and Red Cliffs National Conservation Areas and an Amendment to the St. George Field Office Resource Management Plan, and an Associated Environmental Impact Statement, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended; Federal Land Policy and Management Act (FLPMA) of 1976, as amended; and the Omnibus Public Land Management Act of 2009 (Pub. L 111–11), the Bureau of Land Management (BLM) St. George Field Office (SGFO), St. George, Utah, intends to prepare Resource Management Plans (RMP) for the Beaver Dam Wash and the Red Cliffs National Conservation Areas and an amendment to the St. George Field Office RMP. The BLM SGFO will prepare a single Environmental Impact Statement (EIS) to satisfy the NEPA requirements of this planning process. By this notice, the BLM is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates public scoping for this planning process and associated EIS. Comments on issues may be submitted in writing until June 9, 2010. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media and at the following BLM Web site: *http://www.blm.gov/ut/st/en/fo/st_george.html.* In order to be considered in the Draft RMPs and Draft RMP Amendment/EIS (hereinafter Draft Plans and Amendment/EIS), all comments must be received prior to the close of the 30-day scoping period or 30 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft Plans and Amendment/EIS.

ADDRESSES: You may submit comments on issues and planning criteria related to this planning effort by any of the following methods:

- *Web site: http://www.blm.gov/ut/st/en/fo/st_george.html.*
- *E-mail: utsgrmp@blm.gov.*
- *Fax:* 435–688–3252.
- *Mail:* Bureau of Land Management, *Attn:* Project Manager, 345 E. Riverside Drive, St. George, Utah, 84770.

Documents pertinent to this proposal may be examined at the SGFO.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Keith Rigtrup, Project Manager, telephone (435) 586–2401, address Bureau of Land Management, 345 E. Riverside Drive, St. George, Utah 84770; e-mail *utsgrmp@blm.gov.*

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM SGFO, St. George, Utah intends to prepare RMPs for the Beaver Dam Wash and the Red Cliffs National Conservation Areas and an amendment to the SGFO RMP with an associated EIS; announces the beginning of the scoping process; and seeks public input on issues and planning criteria. On March 30, 2009, Public Law 111–11 was signed into law. Section O of this legislation designated new units of BLM's National Landscape Conservation System in Washington County, Utah, including two National Conservation Areas (NCAs)—the approximately 63,500-acre Beaver Dam Wash NCA and the approximately 45,000-acre Red Cliffs NCA. The new NCAs have as their identified purposes, the conservation, protection, and enhancement of their ecological, natural, cultural/historical, recreational, scenic, educational, wildlife and scientific values, and to protect each species located in the NCA that is listed as a threatened or endangered species. The preparation of management plans for the two NCAs is mandated by Public Law 111–11 and will be completed through this planning effort. To bring the existing SGFO RMP into compliance with the new designations and mandates from Public Law 111–11, the SGFO proposes to amend the RMP to address specific issues and public land uses. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. The plan amendment will be guided by the planning criteria and will identify the issues to be resolved, explain or identify the current management situation, desired resource conditions to be maintained or achieved, and the management actions necessary to achieve those objectives. Specifically, the plan amendment will consider changes to the Off-Highway Vehicle (OHV) area designations (Open, Closed, and Limited) approved through the 1999 SGFO RMP. The plan amendment will also consider nominations for Areas of Critical Environmental Concern on public lands in Washington County "where biological conservation is a priority," pursuant to section 1979 of Public Law 111–11. Preliminary issues for the planning area have been identified by BLM personnel; Federal, state, and local agencies; and other stakeholders. The issues include: Air quality, management of Beaver Dam Wash NCA, management of Red Cliffs NCA, and priority biological conservation areas.

Preliminary planning criteria include:

1. The public planning process for these NCAs will be guided by Public Law 111–11, in addition to FLPMA and NEPA.
2. The BLM will use current scientific information, research, technologies, and results of inventory, monitoring, and coordination to determine appropriate local and regional management strategies that will enhance or restore impaired systems.
3. The Joshua Tree Instant Study Area within the Beaver Dam Wash NCA will be carried forward in all alternatives for management of the Beaver Dam Wash NCA and the area will continue to be managed under Interim Management Policy for Lands Under Wilderness Review.
4. The Joshua Tree National Natural Landmark within the Beaver Dam Wash NCA continues to be a valid designation and will be carried forward in all alternatives for management of Beaver Dam Wash NCA.
5. New Wild and Scenic River proposals will not be evaluated or analyzed in this plan amendment process. One suitable river segment under SGFO administration that was not designated into the National System of Wild and Scenic Rivers by Public Law 111–11 will continue to be managed in accordance with BLM Manual 8351 Wild and Scenic Rivers—Policy and Program Direction for Identification, Evaluation, and Management.
6. Area designations (Open, Closed, or Limited Use) for motorized recreation will be consistent with the BLM

National Management Strategy for Motorized OHV Use on Public Lands and transportation and travel management policy.

7. The designated OHV "Open" area of the Sand Mountain Special Recreation Management Area will remain Open under all alternatives of the plan amendment, consistent with the agreement for joint management by the State of Utah's Sand Hollow Reservoir State Park.

8. Motorized travel routes designated through the Red Cliffs Desert Reserve Public Use Plan (2001) will be carried forward under one or more alternatives.

9. At least one alternative will identify a "northern transportation corridor," as mandated by Public Law 111–11.

You may submit comments on issues and planning criteria to the BLM in writing, at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. In order to be considered in this planning process, all comments must be received prior to the close of the scoping period or 30 days after the last public meeting, whichever is later. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the planning process;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this planning process.

The BLM will provide an explanation in the Draft Plans and Amendment/EIS as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary team approach in the planning process to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Air quality, archeology, biology, botany, climate change, ecology, lands and realty, paleontology, recreation, socio-economics, and soils and vegetation.

Approved:

Selma Sierra,

State Director.

Authority: 40 CFR 1501.7, 43 CFR 1610.2.

[FR Doc. 2010–10990 Filed 5–7–10; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC069 L1711.0000 AL.0000 025B]

Notice of Intent To Solicit Nominations, Carrizo Plain National Monument Advisory Council, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of call for nominations.

SUMMARY: The Bureau of Land Management (BLM) is soliciting nominations from the public to fill positions on the Carrizo Plain National Monument Advisory Committee (MAC). MAC members provide advice and recommendations to the BLM on the management of public lands in the Carrizo Plain National Monument.

ADDRESSES: Nominations should be sent to the Monument Manager, Bureau of Land Management, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, California 93308.

FOR FURTHER INFORMATION CONTACT: Johna Hurl, Monument Manager, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, California 93308, (661) 391–6093, *Johna_Hurl@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: The MAC provides representative citizen counsel and advice to the Secretary of the Interior through the BLM with respect to the revision and implementation of the comprehensive plan for the Carrizo Plain National Monument.

The MAC consists of nine members:

(1) A member of, or nominated by, the San Luis Obispo Board of Supervisors;

(2) A member of, or nominated by, the Kern County Board of Supervisors;

(3) A member of, or nominated by, the Carrizo Native American Advisory Council;

(4) A member of, or nominated by, the Central California Resource Advisory Council;

(5) A member representing individuals or companies authorized to graze livestock within the Monument; and

(6) Four members with recognized backgrounds reflecting:

(a) The purposes for which the Monument was established; and

(b) The interests of other stakeholders, including the general public, who are affected by or interested in the planning and management of the Monument.

Terms of three present MAC members (two public-at-large and one San Luis Obispo County Board of Supervisors) expire on August 25, 2010. Individuals may nominate themselves or others. Nominees must be residents of the counties or neighboring county in which the MAC has jurisdiction. The BLM will evaluate nominees based on their education, training, and experience and their knowledge of the geographical resource.

The Obama Administration prohibits individuals who are currently federally registered lobbyists from serving on all Federal Advisory Committee Act (FACA) and non-FACA boards, committees or councils.

The following must accompany nominations received in this call for nominations:

- Letters of reference from represented interests or organizations;
- A completed background information nomination form; and
- Any other information that speaks to the nominee's qualifications.

Nominations will be accepted for a 45-day period beginning the date this notice is published.

Authority: FACA, 5 U.S.C. App. 2 and the Federal Land and Policy Management Act of 1976, 43 U.S.C. 1701 *et seq.*

Timothy Z. Smith,

Field Manager, Bakersfield Field Office.

[FR Doc. 2010–10984 Filed 5–7–10; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Basin Salinity Control Advisory Council

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Colorado River Basin Salinity Control Advisory Council (Council) was established by the Colorado River Basin Salinity Control

Act of 1974 (Pub. L. 93–320) (Act) to receive reports and advise Federal agencies on implementing the Act. In accordance with the Federal Advisory Committee Act, the Bureau of Reclamation announces that the Council will meet as detailed below. The meeting of the Council is open to the public.

DATES: The Council will conduct the meeting on Friday, June 4, 2010, from 8:30 a.m. to approximately 12:30 p.m. Any member of the public may file written statements with the Council before, during, or up to 30 days after the meeting either in person or by mail. To the extent that time permits, the Council chairman will allow public presentation of oral comments at the meeting. To allow full consideration of information by Council members, written notice must be provided at least 5 days prior to the meeting. Any written comments received prior to the meeting will be provided to Council members at the meeting.

ADDRESSES: The meeting will be held in the Cheyenne room of the Little America Hotel located at 2800 West Lincolnway, Cheyenne, Wyoming. Send written comments to Mr. Kib Jacobson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3753; facsimile (801) 524–3826; e-mail at: *kjacobson@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Kib Jacobson, telephone (801) 524–3753; facsimile (801) 524–3826; e-mail at: *kjacobson@usbr.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to discuss and take appropriate actions regarding the following: (1) The Basin States Program created by Public Law 110–246, which amended the Act; (2) responses to the Advisory Council Report; and (3) other items within the jurisdiction of the Council.

Public Disclosure

Before including your name, address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: *April 2, 2010.*

Larry Walkoviak,

Regional Director, Upper Colorado Region.

[FR Doc. 2010–11065 Filed 5–7–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before April 10, 2010. Pursuant to section 60.13 of 36 CFR Part 60 written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments are also being accepted on the following properties being considered for removal pursuant to 36 CFR 60.15. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by May 25, 2010.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ALABAMA

Calhoun County

Downtown Anniston Historic District (Boundary Increase), Bounded by Wilmer & Walnut Aves., W. 9th & 14th Sts., Anniston, 10000270

Colbert County

Sheffield Downtown Commercial Historic District, 1st & 5th Sts., Pittsburgh & Columbia Aves., Sheffield, 10000271

CONNECTICUT

Windham County

Butts Bridge, Butts Bridge Rd. over Quinebaug R., Canterbury, 10000272

GEORGIA

Chatham County

Carbo House, The, 9 Tybrisa St., Tybee Island, 10000273

Coffee County

Eleventh District A & M School—South Georgia College Historic District, Roughly bounded by College Park Dr., Brooks & Tiger Rds., Douglas, 10000274

IOWA

Hardin County

Hardin County Home Historic District, 28483 Cty. Rd. D41, Eldora, 10000275

Palo Alto County

First Presbyterian Church, 101 1st Ave. SW., West Bend, 10000276

MISSOURI

Pettis County

Sedalia Commercial Historic District (Boundary Increase), 700–712 S. Ohio, 200 S. Moniteau, 101–108 W. Pacific, 104–220 W. Main, 208–400 W. 2nd, 200 W. 4th, 102–120 E. 5th., Sedalia, 10000277

OHIO

Lorain County

Wilson—Falkner—Baldauf House, 3260 Center Rd., Avon, 10000278

Stark County

Saint Joseph's Roman Catholic Church, 322 3rd St. SE., Massillon, 10000279

Summit County

Gothic Building, The, 102 S. High St. & 52–58 E. Mill St., Akron, 10000280

OREGON

Coos County

Egyptian Theatre, 229 S. Broadway, Coos Bay, 10000281

VIRGINIA

Martinsville Independent City

Martinsville Novelty Corporation Factory, 900 Rives Rd., Martinsville (Independent City), 10000282

Newport News Independent City

Noland Company Building, 2600 Warwick Blvd., Newport News (Independent City), 10000283

A request for REMOVAL has been made for the following property:

OREGON

Multnomah County

Mills, Lewis H., House 1350 S.W. Military Rd., Portland, 97000135

[FR Doc. 2010–10937 Filed 5–7–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO910000 L71220000.PN0000 LVTFC09C0020]

Notice of Proposed Supplementary Rules Concerning Fireworks on Public Land in Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is proposing a supplementary rule to restrict the possession and use of fireworks on public land within the State of Colorado. The rules are necessary to protect the area's natural resources and provide for public health and safety.

DATES: Comments on the proposed supplementary rules must be received or postmarked by August 9, 2010 to be considered. In developing final supplementary rules, the BLM is not obligated to consider comments postmarked or received after this date.

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

Mail: Office of Law Enforcement, BLM, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

Internet: http://www.co_proposed_rule@blm.gov (Attn: John Bierk).

FOR FURTHER INFORMATION CONTACT: John Bierk, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, telephone (303) 239–3893. Persons who use a telecommunications device for the deaf (TDD) may contact this individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, seven days a week.

SUPPLEMENTARY INFORMATION:

I. Authority
II. Public Comment Procedures
III. Background
IV. Procedural Matters

I. Authority

43 U.S.C. 1740, 43 U.S.C. 315a, and 43 CFR 8365.1–6.

II. Public Comment Procedures

You may view an electronic version of the proposed supplementary rules at the following BLM Web site: *http://www.blm.gov/co/st/en.html.*

Written comments on the proposed supplementary rules should be specific, confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal that the commenter is addressing. The BLM is not obligated to consider or include in the Administrative Record for the supplementary rules comments that the BLM receives after the close of the comment period (*See* **DATES**), unless they are postmarked or electronically dated before the deadline, or comments delivered to an address other than one of the addresses listed above (*See* **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at 2850 Youngfield Street, Lakewood, Colorado 80215 during regular business hours (9 a.m. to 4 p.m.), Monday through Friday, except Federal holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

III. Background

Under current regulations found in 43 CFR 8365.2–5(a), no person shall discharge or use fireworks in a developed recreation site. Seasonal fire prevention orders issued under the authority of 43 CFR 9212.2(a) are commonly used at the local level to reduce the chance of human-caused fires during the peak fire season. This action would supplement the existing regulations to prohibit the possession and use of fireworks on all public land in Colorado. Drought and subsequent insect kill of large stands of pine trees in Colorado have made the threat of wildfires greater each year. The challenges of fire protection and suppression increase as more people move into the wildland urban interface. Ensuring public and firefighter safety, while protecting property and natural resources, remain BLM priorities.

Under the National Fire Plan, the BLM works with other agencies and communities to ensure adequate preparedness for future fire seasons, restore landscapes, rebuild communities damaged by wildfire, and invest in projects to reduce fire risk. This action complements the National Fire Plan. Land management agencies have taken precautions to enhance public awareness, provide proactive pre-suppression efforts, and implement fire restrictions that are reasonable and consistent among Federal, State, and local agencies. Federal, State, and local land management agencies should strive to implement fire restrictions and closures that are uniform across administrative and geographic boundaries. The restrictions contained in this rulemaking will help achieve that goal.

The proposed prohibition on the possession and use of fireworks is consistent with the other land management regulations designed to enhance fire prevention, and it is consistent with State definitions found in the Colorado Revised Statutes sections 12–28–101(1), 12–28–101(1.5), and 12–28–101(8)(a) and listed in the proposed rule under definitions with one exception. Under Colorado Revised Statutes section 12–28–101(8)(a)(VII)(D), strike-on-box matches are listed as a permissible firework. This section was dropped from the definitions so it would not interfere with visitor use of strike-on-box matches for normal campfire or other uses.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules would not comprise a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These supplementary rules would not have an annual effect of $100 million or more on the economy. They would not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. These supplementary rules would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules would not materially alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights or obligations of their recipients, nor do they raise novel legal or policy issues. These supplementary rules would merely establish rules of conduct for public use of a limited area of public lands.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these supplementary rules easier to understand, including answers to questions such as the following:

1. Are the requirements in the supplementary rules clearly stated?

2. Do the supplementary rules contain technical language or jargon that interferes with their clarity?

3. Does the format of the supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce clarity?

4. Is the description of the supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the rule to the addresses specified in the **ADDRESSES** section.

National Environmental Policy Act

This proposed supplementary rule in and of itself, does not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). It is categorically excluded from environmental review under section 102(2)(C) of NEPA, pursuant to the Department of the Interior regulations implementing NEPA 43 CFR 46.210(i). In addition, the supplementary rule does not meet any of the 10 criteria for exceptions to the categorical exclusions listed in 43 CFR 46.215.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended (5 U.S.C. 601–612) to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These supplementary rules merely establish rules of conduct for public use of a limited area of public lands. Therefore, the BLM has determined under the RFA that the supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These supplementary rules are not considered a "major rule" as defined under 5 U.S.C. 804(2). The supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These supplementary rules would not impose an unfunded mandate on State, local, or Tribal governments in the aggregate, or the private sector of more than $100 million per year; nor would they have a significant or unique effect on small governments. The rules would have no effect on governmental or Tribal entities and would impose no requirements on any of these entities. The supplementary rules merely establish rules of conduct for public use of a limited area of public lands and do not affect Tribal, commercial, or business activities of any kind. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The proposed supplementary rules would not represent a government action capable of interfering with constitutionally protected property rights. Therefore, the Department of the Interior has determined that the proposed supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed supplementary rules would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the BLM has determined that the proposed supplementary rules would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that the proposed supplementary rules would not unduly burden the judicial system, and that they meet the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments [Replaces Executive Order 13084]

In accordance with Executive Order 13175, the proposed supplementary rules do not include policies that have Tribal implications.

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

Under Executive Order 13211, the BLM has determined that the proposed supplementary rules would not comprise a significant energy action, and that they would not have an adverse effect on energy supplies, production, or consumption.

Paperwork Reduction Act

The proposed supplementary rules would not directly provide for any information collection that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Any information collection that may result from Federal criminal investigations or prosecutions conducted under these proposed supplementary rules are exempt from the provisions of 44 U.S.C. 3518(c)(1).

Author

The principal author of these proposed supplementary rules is John Bierk, State Staff Ranger, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

Proposed Supplementary Rules Concerning Fireworks on Public Land in Colorado

For the reasons stated in the preamble, and under the authorities for supplemental rules found at 43 U.S.C. 1740, 43 U.S.C. 315a, and 43 CFR 8365.1–6, the Colorado State Director, Bureau of Land Management (BLM) proposes supplementary rules for public lands managed by the BLM in Colorado, to read as follows:

Definitions

Fireworks means any composition or device designed to produce a visible or audible effect by combustion, deflagration, or detonation, and that meets the definition of articles pyrotechnic, permissible fireworks, or display fireworks, as defined by Colorado Revised Statutes 12–28–101(1), 12–28–101(1.5), and 12–28–101(8)(a).

Colorado Revised Statutes 12–28–101(1)

"Articles pyrotechnic" means pyrotechnic special effects materials and pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but are intended for theatrical performances and not intended for consumer use. Articles pyrotechnic shall also include pyrotechnic devices meeting the weight limits for consumer fireworks but are not labeled as such and are classified as UN0431 or UN0432 pursuant to 49 CFR 172.101, as amended.

Colorado Revised Statutes 12–28–101(1.5)

"Display fireworks" means large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and includes, but is not limited to, salutes containing more than one hundred thirty milligrams of explosive material, aerial shells containing more than forty grams of pyrotechnic compositions, and other display pieces that exceed the limits of explosive materials for classification as consumer fireworks as defined in 16 CFR 1500.1 to 1500.272 and 16 CFR 1507.1 to 1507.12 and are classified as fireworks UN0333, UN0334, or UN0335 pursuant to 49 CFR 172.101, as amended, and including fused set pieces containing components that exceed fifty milligrams of salute powder.

Colorado Revised Statutes 12–28–101(8)(a)

"Permissible fireworks" means the following small fireworks devices designed to produce audible or visual effects by combustion, complying with the requirements of the United States consumer product safety commission as set forth in 16 CFR 1500.1 to 1500.272 and 1507.1 to 1507.12, and classified as consumer fireworks UN0336 and UN0337 pursuant to 49 CFR 172.101:

(I) Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams each for a single tube or, when more than one tube is mounted on a common base, a total pyrotechnic composition of no more than two hundred grams;

(II) Cone fountains, total pyrotechnic composition not to exceed fifty grams each for a single cone or, when more than one cone is mounted on a common base, a total pyrotechnic composition of no more than two hundred grams;

(III) Wheels, total pyrotechnic composition not to exceed sixty grams for each driver unit or two hundred grams for each complete wheel;

(IV) Ground spinner, a small device containing not more than twenty grams of pyrotechnic composition venting out of an orifice usually in the side of the tube, similar in operation to a wheel, but intended to be placed flat on the ground;

(V) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed two hundred grams each;

(VI) Dipped sticks and sparklers, the total pyrotechnic composition of which does not exceed one hundred grams, of which the composition of any chlorate or perchlorate shall not exceed five grams;

(VII) Any of the following that do not contain more than fifty milligrams of explosive composition:

(A) Explosive auto alarms;

(B) Toy propellant devices;

(C) Cigarette loads;

(D) Other trick noise makers;

(VIII) Snake or glow worm pressed pellets of not more than two grams of pyrotechnic composition and packaged in retail packages of not more than twenty-five units;

(IX) Fireworks that are used exclusively for testing or research by a licensed explosives laboratory;

(X) Multiple tube devices with:

(A) Each tube individually attached to a wood or plastic base;

(B) The tubes separated from each other on the base by a distance of at least one-half of one inch;

(C) The effect limited to a shower of sparks to a height of no more than fifteen feet above the ground;

(D) Only one external fuse that causes all of the tubes to function in sequence; and

(E) A total pyrotechnic composition of no more than five hundred grams.

Prohibited Acts

Unless otherwise authorized, the following acts are prohibited on all public lands, roads, trails, or waterways administered by the BLM in Colorado:

1. The possession, discharge, or use of all fireworks as defined by Colorado Revised Statutes 12–28–101(1), 12–28–101(1.5), and 12–28–101(8)(a); and

2. The violation of the terms, conditions of use, or stipulations of any written authorization that may be exempted under this rule. The following person(s) are exempt from this order: Any Federal, State, or local officer, or member of an organized rescue or fire suppression or fuels management force or other authorized agency personnel while in the performance of their official duties.

Penalties

Under the Taylor Grazing Act of 1934, 43 U.S.C. 315a, any willful violation of these supplementary rules on public lands within a grazing district shall be punishable by a fine of not more than $500 or,

Under section 303(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1733(a) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules on public lands within Colorado may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Helen M. Hankins,

State Director.

[FR Doc. 2010–10991 Filed 5–7–10; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA23294]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture (USDA) Forest Service has filed an application with the Bureau of Land Management (BLM) that proposes to extend the duration of Public Land Order (PLO) No. 6801 for an additional 20-year period. This order withdrew approximately 61.356 acres of National Forest System land from the mining laws to protect the Smithsonian Institution's Fred Lawrence Whipple Observatory. The withdrawal created by PLO No. 6801 will expire on September 18, 2010, unless extended. This notice gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by August 9, 2010.

ADDRESSES: Comments and meeting request should be sent to the Coronado National Forest Office, Federal Building, 300 West Congress Street, Tucson, Arizona 85701, (520) 388–8348.

FOR FURTHER INFORMATION CONTACT: Karl Sandwell-Weiss, Minerals Resource Geologist, at the Forest Service address listed above, or Vivian Titus, Bureau of Land Management, Arizona State Office, One North Central, Suite 800, Phoenix, Arizona 85004, (602) 417–9598.

SUPPLEMENTARY INFORMATION: The USDA Forest Service has filed an application requesting that the Secretary of the Interior extend PLO No. 6801 (55 FR 38550, (1990)) which withdrew approximately 61.356 acres of National Forest System land located in Santa Cruz County, Arizona, from location and entry under the United States mining laws (30 U.S.C. ch. 2) for an additional 20-year term, subject to valid existing rights. PLO No. 6801 is incorporated herein by reference.

The purpose of the proposed extension is to continue to protect

valuable facilities and improvements for scientific work associated with the Smithsonian Institution's Fred Lawrence Whipple Observatory. The Federal investment and utility of the observatory may be lost if the site is open to mineral location.

As extended, the withdrawal would not alter the applicability of those public land laws governing the use of land under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws.

The use of a right-of-way or interagency or cooperative agreement would not provide adequate protection from prospecting disturbance, mining operations, or mineral patent, under the 36 CFR part 228, surface protection regulations.

There is no alternative site to ensure protection of the existing facilities on the above described public lands.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the Coronado National Forest Office, at the address stated above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to Karl Sandwell-Weiss, Coronado National Forest Office, at the address stated above by August 9, 2010. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and in at least one local newspaper no less than 30 days before the scheduled date of the meeting.

The withdrawal extension application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Authority: 43 CFR 2310.3–1(b).

Deborah E. Stevens,

Acting, Deputy State Director, Office of Communications.

[FR Doc. 2010–10987 Filed 5–7–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA22647]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture (USDA) Forest Service has filed an application with the Bureau of Land Management (BLM) that proposes to extend the duration of Public Land Order (PLO) No. 6812 for an additional 20-year period. PLO No. 6812 withdrew approximately 40 acres of National Forest System land from the mining laws for use as a base camp site for the Smithsonian Institution's Fred Lawrence Whipple Observatory. The withdrawal created by PLO No. 6812 will expire on October 30, 2010, unless extended. This notice gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by August 9, 2010.

ADDRESSES: Comments and meeting request should be sent to the Coronado National Forest Office, Federal Building, 300 West Congress Street, Tucson, Arizona 85701, (520) 388–8348.

FOR FURTHER INFORMATION CONTACT: Karl Sandwell-Weiss, Minerals Resource Geologist, at the Forest Service address listed above, or Vivian Titus, Bureau of Land Management, Arizona State Office, One North Central, Suite 800, Phoenix, Arizona 85004, (602) 417–9598.

SUPPLEMENTARY INFORMATION: The USDA Forest Service has filed an application requesting that the Secretary of the Interior extend PLO No. 6812 (55 FR 45805, (1990)), which withdrew 40 acres of National Forest System land located in Santa Cruz County, Arizona, from location and entry under the United States mining laws (30 U.S.C. ch. 2) for an additional 20-year term. PLO No. 6812 is incorporated herein by reference.

The purpose of the proposed extension is to continue to protect valuable facilities and improvements associated with the Smithsonian Institution's Fred Lawrence Whipple Observatory Base Camp Site. The facilities include a visitor center, administrative offices, and a motor pool. The Federal investment and utility of the observatory may be lost if the site is open to mineral location.

As extended, the withdrawal would not alter the applicability of those public land laws governing the use of land under lease, license, or permit, or governing the disposal of the mineral or vegetative resources other than under the mining laws.

The use of a right-of-way or interagency or cooperative agreement would not provide adequate protection from prospecting disturbance, mining operations, or mineral patent, under the 36 CFR part 228, surface protection regulations.

There is no alternative site to ensure protection of the existing facilities on the above described public lands.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the Coronado National Forest Office at the address stated above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal extension

must submit a written request to Karl Sandwell-Weiss, Coronado National Forest Office at the address stated above by August 9, 2010. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and in at least one local newspaper no less than 30 days before the scheduled date of the meeting.

The withdrawal extension application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Authority: 43 CFR 2310.3–1(b).

Deborah E. Stevens,

Acting, Deputy State Director, Office of Communications.

[FR Doc. 2010–10989 Filed 5–7–10; 8:45 am]

BILLING CODE 4310–11–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–514]

China: Intellectual Property Infringement, Indigenous Innovation Policies, and Frameworks for Measuring the Effects on the U.S. Economy

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt of a request from the United States Senate Committee on Finance (Committee) dated April 19, 2010, the U.S. International Trade Commission (Commission) instituted investigation No. 332–514, *China: Intellectual Property Infringement, Indigenous Innovation Policies, and Frameworks for Measuring the Effects on the U.S. Economy,* for the purpose of preparing the first of two reports requested by the Committee, and has scheduled a public hearing in connection with investigations relating to both reports for June 15, 2010.

DATES:

June 1, 2010: Deadline for filing requests to appear at the public hearing.

June 3, 2010: Deadline for filing pre-hearing briefs and statements.

June 15, 2010: Public hearing.

June 22, 2010: Deadline for filing post-hearing briefs and statements.

July 9, 2010: Deadline for filing all other written submissions concerning investigation No. 332–514.

November 19, 2010: Transmittal of first report to the Senate Committee on Finance.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All written submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://www.usitc.gov/secretary/edis.htm.*

FOR FURTHER INFORMATION CONTACT: Project Leaders Katherine Linton (*katherine.linton@usitc.gov* or 202–205–3393) or Alexander Hammer (*alexander.hammer@usitc.gov* or 202–205–3271) or Deputy Project Leader Jeremy Wise (*jeremy.wise@usitc.gov* or 202–205–3190) for information specific to this investigation. For information on the legal aspects of these investigations, contact William Gearhart of the Commission's Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819 or *margaret.olaughlin@usitc.gov).* Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). 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.

Background: The Commission has instituted this investigation for the purpose of preparing the first of the reports requested by the Committee. The first report will:

- Describe the principal types of reported IPR infringement in China;
- Describe China's indigenous innovation policies; and
- Outline analytical frameworks for determining the quantitative effects of the infringement and indigenous innovation policies on the U.S. economy as a whole and on sectors of the U.S. economy, including lost U.S. jobs.

As requested by the Committee, the Commission will deliver this first report by November 19, 2010. The Committee asked the Commission to provide a second report by May 2, 2011, that describes the size and scope of reported IPR infringement in China; that provides a quantitative analysis of the impact of reported IPR infringement in China on the U.S. economy and U.S. jobs and on the potential effects on sales, profits, royalties, and license fees of U.S. firms globally; and that discusses actual, potential, and reported effects of China's indigenous innovation policies on the U.S. economy and U.S. jobs, and quantifies these effects, to the extent feasible. The Commission will publish a notice shortly that announces institution of an investigation to prepare this second report.

Public Hearing: The Commission will hold a public hearing in connection with this investigation, and the investigation to be instituted in connection with the second report, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on June 15, 2010 (continuing on June 16, 2010, if needed). Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., June 1, 2010, in accordance with the requirements in the "Submissions" section below. All pre-hearing briefs and statements should be filed not later than 5:15 p.m., June 3, 2010; and all post-hearing briefs and statements should be filed not later than 5:15 p.m., June 22, 2010. In the event that, as of the close of business on June 1, 2010, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after June 4, 2010, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating at the hearing, interested parties are invited to submit written statements concerning this investigation. All written submissions concerning this investigation should be addressed to the Secretary, and should be received not later than 5:15 p.m., July 9, 2010. All written submissions must conform with the provisions of section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8). Section 201.8 requires that a signed original (or a copy so designated) and fourteen (14) copies of each document be filed. In the event that confidential treatment of a document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic

Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000). Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the "confidential" or "non-confidential" version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available for inspection by interested parties.

In its request letter, the Committee stated that it intends to make the Commission's reports available to the public in their entirety, and asked that the Commission not include any confidential business information or national security classified information in the reports that the Commission sends to the Committee. Any confidential business information received by the Commission in this investigation and used in preparing this report will not be published in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: May 5, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–11011 Filed 5–7–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1518]

NIJ Body Armor Compliance Testing Program Workshop

AGENCY: National Institute of Justice.

ACTION: Notice of meeting.

SUMMARY: The National Institute of Justice (NIJ) is hosting a Body Armor Compliance Testing Program Workshop for manufacturers and test laboratories on Tuesday, May 18, 2010, from 8 a.m. to 3 p.m. NIJ is hosting this workshop specifically to update manufacturers and test laboratories with regard to the Compliance Testing Program, status of testing, administrative clarifications, and the follow-up inspection and testing process. This will be an open forum and there will ample opportunities for attendees to ask questions. Participants are strongly encouraged to come prepared to ask questions.

Space is limited at this workshop, and as a result, only 100 participants will be allowed to register. We request that each manufacturer and test laboratory limit their representatives to no more than two per organization. Exceptions to this limit may occur, should space allow. Participants planning to attend are responsible for their own travel arrangements. Please use the following *http://www.justnet.org/Pages/RecordView.aspx?itemid=2396* to see an agenda and obtain the registration form to attend the Workshop. You will receive a response to your request within 2 business days.

DATES: The meeting will be held from 8 a.m. to 3 p.m.

ADDRESSES: Westin Annapolis Hotel, 100 Westgate Circle, Annapolis, MD 21401.

FOR FURTHER INFORMATION CONTACT: Jennifer O'Connor, by telephone at 202–307–0070 [Note: this is not a toll-free telephone number], or by e-mail at *Jennifer.O'Connor@usdoj.gov.*

Kristina Rose,

Acting Director, National Institute of Justice.

[FR Doc. 2010–10922 Filed 5–7–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

May 5, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin A. King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Wage and Hour Division (WHD), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), *E-mail: OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB 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;
- 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 submission of responses.

Agency: Wage and Hour Division.

Type of Review: Extension and Revision of a currently approved collection.

Title of Collection: Records to be kept by Employers—Fair Labor Standards Act.

OMB Control Number: 1235–0018.

Affected Public: Private Sector (Business or other for-profits, Not-for-profit institutions, and Farms); State, Local, or Tribal Governments; and Individuals or Households.

Total Estimated Number of Respondents: 3,486,025.

Total Estimated Annual Burden Hours: 853,924.

Total Estimated Annual Costs Burden (does not include hourly wage costs): $0.

Description: Employers respond to these information collections to document compliance with the Fair Labor Standards Act, 29 U.S.C. 201, *et seq*. For additional information, see related notice published in the **Federal Register** on December 23, 2009 (74 FR 68284).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–10982 Filed 5–7–10; 8:45 am]

BILLING CODE 4510–27–P

MERIT SYSTEMS PROTECTION BOARD

The Merit Systems Protection Board (MSPB) is Providing Notice of the Opportunity to File Amicus Briefs in the Matter of Larry L. Evans v. Department of Veterans Affairs, MSPB Docket Number AT–3330–09–0953–I–1.

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Mr. Evans is a preference eligible veteran who has filed an appeal with the MSPB alleging that the agency violated his rights under the Veterans Employment Opportunities Act of 1998 (VEOA) when it failed to select him for a position. The issues raised in this matter concern the interplay of the Federal Career Intern Program (FCIP) with VEOA. The FCIP was established in 2000 by Executive Order 13,162 "to provide for the recruitment and selection of exceptional employees for careers in the public sector," to attract exceptional individuals with "diverse professional experiences, academic training and competencies" to the Federal workforce," and "to prepare them for careers in analyzing and implementing public programs." Exec. Order 13, 162; *see Scull* v. *Department of Homeland Security,* 113 M.S.P.R. 287, ¶ 6 (2010).

Appointments under the FCIP are to positions in Schedule B of the excepted service and are not to exceed 2 years, unless extended by the agency, with the concurrence of the Office of Personnel Management (OPM), for up to 1 additional year. *Scull,* 113 M.S.P.R. 287, ¶ 6; 5 CFR 213.3202(o)(1)–(2). Upon successful completion of the internship, the agency may effect the intern's noncompetitive conversion to a career or career-conditional appointment in the competitive service. *Scull,* 113 M.S.P.R. 287, ¶ 6; 5 CFR 213.3202(o)(6)(i).

Evans presents the following legal issues: (1) Is 5 U.S.C. 3302(1) a "statute * * * relating to veterans' preference" on which a claim under VEOA may be based? *See* 5 U.S.C. 3330a(1)(A); (2) if so, may OPM delegate to other executive agencies the authority to except positions from the competitive service under 5 U.S.C. 3302(1)?; and (3) if that the answers to (1) and (2) are "yes," what must an agency do to justify the use of the FCIP to fill a vacant position, considering the requirement of 5 U.S.C. § 3302(1) that exceptions to the competitive service be "necessary" so as to provide for "conditions of good administration"? *See Weed* v. *Social Security Administration,* 112 M.S.P.R. 323, ¶¶ 16–18 (2009) (describing the legal issues concerning use of the FCIP and 5 U.S.C. 3302(1)).

Interested parties may submit amicus briefs or other comments on this issue no later than June 11, 2010. Amicus briefs must be filed with the Clerk of the Board. Briefs shall not exceed 15 pages in length. The text shall be double-spaced, except for quotations and footnotes, and the briefs shall be on 8½ by 11 inch paper with one inch margins on all four sides.

DATES: All briefs submitted in response to this notice shall be filed with the Clerk of the Board on or before June 11, 2010.

ADDRESSES: All briefs shall be captioned "*Larry L. Evans* v. *Department of Veterans Affairs*" and entitled "Amicus Brief." Only one copy of the brief need be submitted. Briefs must be filed with the Office of the Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

FOR FURTHER INFORMATION CONTACT: Matthew Shannon, Office of the Clerk of the Board, (202) 653–7200.

Dated: May 4, 2010.

William D. Spencer,

Clerk of the Board.

[FR Doc. 2010–10988 Filed 5–7–10; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before June 9, 2010 to be assured of consideration.

ADDRESSES: Send comments to Mr. Nicholas A. Fraser, Desk Officer for NARA, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5167; or electronically mailed to *Nicholas_A._Fraser@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on February 24, 2010 (75 FR 8407 and 8408). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (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 the use of information technology; and (e) whether small businesses are affected by this collection. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Identification Card Request.

OMB number: 3095–0057.

Agency form number: NA Form 6006.

Type of review: Regular.

Affected public: Individuals or households, Business or other for-profit, Federal government.

Estimated number of respondents: 1,500.

Estimated time per response: 3 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 75 hours.

Abstract: The collection of information is necessary as to comply with HSPD–12 requirements. Use of the form is authorized by 44 U.S.C. 2104. At the NARA College Park facility, individuals receive a proximity card with the identification badge that is electronically coded to permit access to secure zones ranging from a general nominal level to stricter access levels for classified records zones. The proximity card system is part of the security management system that meets the accreditation standards of the Government intelligence agencies for storage of classified information and serves to comply with E.O. 12958.

Dated: May 4, 2010.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. 2010–11117 Filed 5–7–10; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection, NATF Form 36, Microfilm Publication Order Form, used by customers/researchers for ordering roll(s) or microfiche of a microfilm publication. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before July 9, 2010 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Microfilm Publication Order Form.

OMB number: 3095–0046.

Agency form number: NATF Form 36.

Type of review: Regular.

Affected public: Business or for-profit, nonprofit organizations and institutions, federal, state and local government agencies, and individuals or households.

Estimated number of respondents: 600.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 100 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.72. The collection is prepared by researchers who cannot visit the appropriate NARA research room or who request copies of records as a result of visiting a research room. NARA offers limited provisions to obtain copies of records by mail and requires requests to be made on prescribed forms for certain bodies of records. The National Archives Trust Fund (NATF) Form 36 (09/05), Microfilm Publication Order Form, is used by customers/researchers for ordering a roll, rolls, or a microfiche of a microfilm publication.

Dated: May 4, 2010.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. 2010–11118 Filed 5–7–10; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavioral, and Economic Sciences (#1171).

Date/Time: May 20, 2010; 8:30 a.m. to 5:30 p.m. May 21, 2010; 8:30 a.m. to 3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Stafford I, Room 1235, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Ms. Lisa Jones, Office of the Assistant Director, Directorate for Social, Behavioral, and Economic Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 905, Arlington, Virginia 22230, 703–292–8700.

Summary of Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate programs and activities.

Agenda:

Thursday, May 20, 2010

Updates and discussions on continuing activities.

- Budget priorities for FY 2011.
- SBE Future Directions.

AC Report Planning for SBE Future.

Discussion with NSF Director and Deputy Director.

Friday, May 21, 2010

Updates and discussion on continuing activities.

- SLC.
- International Engagement.

Open Discussion.

Planning for FY 2011 and Beyond.

Dated: May 4, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–10932 Filed 5–7–10; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, May 13, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), 9(B) and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, May 13, 2010 will be:

Institution and settlement of injunctive actions;
Institution of administrative proceedings;
A litigation matter; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: May 6, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–11219 Filed 5–6–10; 4:15 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading; In the Matter of Alyn Corp., American HealthChoice, Inc., American Holding Investments, Inc., American Midland Corp., American Millennium Corp., American Pallet Leasing, Inc., American Patriot Funding, Inc. (f/k/a Referral Holdings Corp.), American Quantum Cycles, Inc., American Stellar Energy, Inc. (n/k/a Tara Gold Resources Corp.), Americare Health Scan, Inc. (f/k/a United Products International, Inc.), Amnex, Inc., and Amwest Environmental Group, Inc.

May 6, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Alyn Corp. because it has not filed any periodic reports since the period ended March 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American HealthChoice, Inc. because it has not filed any periodic reports since the period ended June 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Holding Investments, Inc. because it has not filed any periodic reports since the period ended December 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Midland Corp. because it has not filed any periodic reports since the period ended December 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Millennium Corp. because it has not filed any periodic reports since the period ended April 30, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Pallet Leasing, Inc. because it has not filed any periodic reports since the period ended March 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Patriot Funding, Inc. (f/k/a Referral Holdings Corp.) because it has not filed any periodic reports since the period ended June 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Quantum Cycles, Inc. because it has not filed any periodic reports since the period ended July 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Stellar Energy, Inc. (n/k/a Tara Gold Resources Corp.) because it has not filed any periodic reports since September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Americare Health Scan, Inc. (f/k/a United Products International, Inc.) because it has not filed any periodic reports during the following periods: Since the period ended September 30, 2008; from the period ended March 31, 2004 through the period ended December 31, 2005; and from the period ended December 31, 1997 through the period ended June 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Amnex, Inc. because it has not filed any periodic reports since March 31, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Amwest Environmental Group, Inc. because it has not filed any periodic reports since May 31, 1997.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 6, 2010, through 11:59 p.m. EDT on May 19, 2010.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2010–11111 Filed 5–6–10; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62026; File No. SR–NYSEArca–2010–33]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, by NYSE Arca, Inc. Amending Rule 4, Capital Requirements, Financial Reports, Margins

May 4, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 22, 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 self-regulatory organization. On April 29, 2010, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain financial rules contained in Rule 4. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

The Exchange proposes to update its minimum net capital requirements in Rule 4.1. Currently, Rule 4.1 does not address OTP Holders that are not subject to the net capital requirements of Rule 15c3–1 of the Securities Exchange Act. The Exchange proposes to amend NYSE Arca Rule 4.1 by adding a provision that requires OTP Holders that are not subject to the net capital requirements of Rule 15c3–1 to meet an initial minimum ownership equity requirement of $25,000 per Market Maker as defined by Rule 6.32. The rule will further require an OTP Holder to meet a minimum ownership equity maintenance requirement of $15,000 per Market Maker. The minimum ownership equity will be calculated using Generally Accepted Accounting Principles (GAAP). The Exchange also proposes to require firms that fail to meet the minimum ownership equity requirement to notify the corporation in writing promptly upon discovery of the failure. This proposed rule establishes a minimum equity requirement for Market Maker OTP firms not subject to the net capital requirements of Exchange Act Rule 15c3–1.

The Exchange also proposes to add to Rule 4.1 subsection (c) that requires OTP Holders to suspend all business operations during any period in which it is not in compliance with the net capital or minimum ownership equity requirements of 4.1(a) or 4.1(b).[4] This new requirement is based in part on FINRA Rule 4110(b)(1).[5]

The Exchange proposes to amend NYSE Arca Rules 4.5(a) to remove the reference to a date that has past and is no longer applicable. The Exchange also proposes to amend the headings of Rule 4.5(b), (c), and (d) to more accurately reflect the applicability of each subsection. Finally, the Exchange proposes to add language to subsections (b) and (e) of the Rule that will require OTP Holders filing those reports to maintain original copies of such reports with manual signatures. These changes clarify the requirements of Rule 4.5 and increase regulatory efficiency by offering OTP Holders a uniform standard for filing FOCUS Reports.

Finally, the Exchange will amend Rule 4.7 to eliminate a circular rule reference. The Exchange will replace the reference in 4.7(a) to Rule 4.1 with a reference to Exchange Act Rule 15c3–1(b).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Exchange Act,[6] in general, and furthers the objectives of Section 6(b)(5)[7] in particular in that it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed changes create additional investor protections by enhancing the capital requirements, notification, and recordkeeping provisions of certain NYSE Arca 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[8] and Rule 19b–4(f)(6) thereunder.[9] 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[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–33 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–2010–33. This

[4] The Exchange notes that Securities Exchange Act Rule 15c3–1 requires that every broker or dealer shall at all times have and maintain certain specified levels of net capital. The Exchange further notes that to the extent a broker-dealer fails to maintain at least the amount of net capital specified in Rule 15c3–1, it must cease doing a securities business. *See* 72 FR 12862, at 12872.

[5] *See* Securities Exchange Act Release No. 60933 (November 4, 2009), 74 FR 58334 (November 12, 2009) (Order Approving of SR–FINRA–2008–067).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 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.

file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSEArca. 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–2010–33 and should be submitted on or before June 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10957 Filed 5–7–10; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62019; File No. SR–NYSEArca–2010–16]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Amending Rule 6.37A and Rule 6.64

April 30, 2010.

On March 11, 2010, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 [2] thereunder to amend the bid-ask differentials for market maker quotations outlined in NYSE Arca Rule 6.37A(b)(4) and amend NYSE Arca Rule 6.64(b) to establish bid-ask parameters in the OX System to be used during the opening auction process ("Auction") and to implement an associated conforming change to NYSE Arca Rule 6.87. The proposed rule change was published for comment in the **Federal Register** on March 30, 2010.[3] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

Currently, NYSE Arca Rule 6.37A(b)(4) specifies the bid-ask differential requirements applicable to market maker quotations when electronically bidding and offering on the OX System during an Auction. The Exchange now proposes to replace the applicable bid-ask differentials for market maker quoting obligations during an Auction, with the $5 quote differential that is in place at all other times.

NYSE Arca also proposes to establish parameters for the opening auction as described in Rule 6.64. Pursuant to this proposed rule change, the OX System will not conduct an Auction in a given series unless the composite NYSE Arca bid-ask is within an acceptable range. For the purposes of the Auction, an acceptable range will be the bid-ask parameters pursuant to Rule 6.37(b)(1)(A)–(E). These bid-ask differentials are identical to the existing legal width differentials for market maker Auction quotations which this filing proposes to delete. The Exchange represented that by establishing price protection parameters within the Auction process of the OX System, rather than just as a requirement for submitted quotes, customers and other market participants will be afforded a higher level of price protection than they presently have on NYSE Arca.

In addition, the Exchange proposes a minor change to Rule 6.87—Obvious Errors and Catastrophic Errors. Rule 6.87(b)(2)(B) presently contains a reference to bid-ask differentials pursuant to Rule 6.37A(b)(4)–(5). Due to the proposed changes contained in this filing related to the bid-ask differentials of Rule 6.37A(b)(4)–(5), the Exchange proposes to now reference the bid-ask differentials contained in Rule 6.37(b)(1)(A)–(E). The bid-ask differentials of each rule are identical, therefore the change will not alter in any way the methods used by the Exchange when making obvious error determinations.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of Section 6 of the Act.[5] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of a national securities exchange 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms 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 requirements provided under the Exchange's current quote parameters applicable during the Auction are not being eliminated but instead are being transferred and integrated into the Auction process itself. Pursuant to the proposed rule change, the OX System will not conduct an Auction in a given series unless the BBO is within an acceptable range, delineated by the parameters in NYSE Arca Rule 6.37(b)(1)(A)–(E), the identical width differentials for market maker Auction quotations that currently exist. The Commission believes that establishing parameters in the Auction process itself instead should enhance efficiency in pricing for customers and other market participants. Lastly, the proposed conforming changes to NYSE Arca Rule 6.87 are not substantive and thus do not raise any regulatory concerns. For these reasons, the Commission finds that the proposed changes are consistent with the Act.

Therefore, it is ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSEArca–2010–16) is hereby approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61759 (March 23, 2010), 75 FR 15758 ("Notice").

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10962 Filed 5–7–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62028; File No. SR–Phlx–2010–65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. To Add Seventy-Five Options Classes to the Penny Pilot Program

May 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on April 27, 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, 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 is filing with the Commission a proposal to designate seventy-five options classes to be added to the Penny Pilot Program ("Penny Pilot" or "Pilot") on May 3, 2010.[3] The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.[4]

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 this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective May 3, 2010.

In the Exchange's immediately effective filing to extend and expand the Penny Pilot through December 31, 2010,[5] the Exchange proposed expanding the Pilot four times on a quarterly basis. Each such quarterly expansion would be of the next seventy-five most actively traded multiply listed options classes based on the national average daily volume ("ADV") for the six months prior to selection, closing under $200 per share on the Expiration Friday prior to expansion; however, the month immediately preceding the addition of options to the Penny Pilot will not be used for the purpose of the six month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on May 3, 2010, based on ADVs for the six months ending March 31, 2010.

Nat'l ranking	Symbol	Security name	Nat'l ranking	Symbol	Security name
153	XLV	Health Care Select Sector SPDR Fund	247	JCP	JC Penney Co Inc.
155	CIEN	Ciena Corp	248	ACL	Alcon Inc.
157	AMLN	Amylin Pharmaceuticals Inc	249	STP	Suntech Power Holdings Co Ltd.
158	CTIC	Cell Therapeutics Inc	250	TLB	Talbots Inc.
159	MDT	Medtronic Inc	251	SYMC	Symantec Corp.
162	TIVO	TiVo Inc	253	AMED	Amedisys Inc.
163	MNKD	MannKind Corp	255	TM	Toyota Motor Corp.
171	MDVN	Medivation Inc	257	HK	Petrohawk Energy Corp.
176	BRKB	Berkshire Hathaway Inc	258	ENER	Energy Conversion Devices Inc.
178	APOL	Apollo Group Inc	259	STT	State Street Corp.
181	BSX	Boston Scientific Corp	260	BHP	BHP Billiton Ltd.
185	XLY	Consumer Discretionary Sel. Sec. SPDR Fund.	261	NFLX	NetFlix Inc.
188	CLF	Cliffs Natural Resources Inc	262	LDK	LDK Solar Co Ltd.
190	ZION	Zions Bancorporation	263	SPG	Simon Property Group Inc.
194	IOC	InterOil Corp	264	TIF	Tiffany & Co.
197	ITMN	InterMune Inc	265	BUCY	Bucyrus International Inc.
204	GME	GameStop Corp	266	WAG	Walgreen Co.
209	XLK	Technology Select Sector SPDR Fund	268	IP	International Paper Co.
210	AKS	AK Steel Holding Corp	271	XME	SPDR S&P Metals & Mining ETF.
212	GRMN	Garmin Ltd	272	KGC	Kinross Gold Corp.
213	MRVL	Marvell Technology Group Ltd	273	EP	El Paso Corp.
215	XLP	Consumer Staples Select Sector SPDR Fund.	274	SEED	Origin Agritech Ltd.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in January 2007 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74) (notice of filing and approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR–Phlx–2009–91) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); and 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR–Phlx–2009–94) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR–Phlx–2010–12) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

[4] *See* Rule 1034 regarding the Penny Pilot.

[5] *See* Securities Exchange Act Release No. 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR–Phlx–2009–91) (notice of filing and immediate effectiveness).

Nat'l ranking	Symbol	Security name	Nat'l ranking	Symbol	Security name
216	UNP	Union Pacific Corp	275	WIN	Windstream Corp.
220	DTV	DIRECTV	279	DHI	DR Horton Inc.
223	WMB	Williams Cos Inc/The	280	ADBE	Adobe Systems Inc.
225	MEE	Massey Energy Co	281	PCX	Patriot Coal Corp.
227	CELG	Celgene Corp	282	SPWRA	SunPower Corp.
229	GMCR	Green Mountain Coffee Roasters Inc	284	LCC	US Airways Group Inc.
231	WDC	Western Digital Corp	285	PRU	Prudential Financial Inc.
234	DAL	Delta Air Lines Inc	286	LEN	Lennar Corp.
235	FXE	CurrencyShares Euro Trust	287	EWT	iShares MSCI Taiwan Index Fund.
237	COST	Costco Wholesale Corp	288	KBH	KB Home.
239	MJN	Mead Johnson Nutrition Co	289	CREE	Cree Inc.
240	ALL	Allstate Corp/The	290	SIRI	Sirius XM Radio Inc.
241	SII	Smith International Inc	291	MMR	McMoRan Exploration Co.
242	RTN	Raytheon Co	292	CENX	Century Aluminum Co.
243	DVN	Devon Energy Corp	293	GFI	Gold Fields Ltd.
244	MT	ArcelorMittal			

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by identifying the options classes to be added to the Penny Pilot in a manner consistent with prior approvals and filings.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(i) of the Act[8] and Rule 19b–4(f)(1) thereunder,[9] the Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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-2010–65 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-2010–65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx-2010–65 and should be submitted on or before June 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10964 Filed 5–7–10; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62013; File No. SR–NYSEArca–2010–35]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Market Maker Requirements for Certain Covered Products

April 30, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on April 23, 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 (i) amend NYSE Arca Equities Rule 6.3 and (ii) remove the requirement that Market Makers in certain covered products enumerated below maintain certain specifically prescribed information barrier procedures, but instead apply the standards established with the Commission's order approving SR–NYSEArca–2009–78 (hereinafter referred to as the "Order").[3] A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

Background Information

The Exchange eliminated the requirement set forth in NYSE Arca Equities Rule 7.26 that Market Makers on the Corporation maintain certain specifically prescribed information barrier procedures.[4] At the same time, the Exchange further proposed new NYSE Arca Equities Rule 6.7, which (i) prohibits ETP Holders from trading ahead of research reports and (ii) requires each ETP Holder to establish, maintain and enforce procedures regarding the flow of information between research department personnel and trading department personnel. Finally, the Exchange revised NYSE Arca Equities Rule 6.18 to incorporate compliance with NASD Rule 3010(a)(1), (b)(1), and (c)(1).

NYSE Arca Equities Rules 5 & 8

Currently, certain product related NYSE Arca Equities rules cross reference NYSE Arca Equities Rule 7.26 regarding information barriers. These cross references to NYSE Arca Equities Rule 7.26 and the attendant obligations, contained in Rules 5.2(j)(6), 8.200, 8.201, 8.202, 8.203, 8.204, 8.300, 8.400, 8.500, and 8.700, generally expanded the definition of "other business activities" as set forth in NYSE Arca Equities Rule 7.26 so as to require ETP Holders acting as a Market Maker in the covered products to maintain information barrier procedures when the Market Maker (or an affiliate) engages in certain other business activities related to the covered products. At the time the Exchange eliminated NYSE Arca Equities rule 7.26, it did not further eliminate or otherwise amend the obligations set forth in Rules 5.2(j)(6), 8.200, 8.201, 8.202, 8.203, 8.204, 8.300, 8.400, 8.500, and 8.700. The current limitations and prohibitions set forth in these rules also specifically prohibit ETP Holders acting as Market Makers in the covered products from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in any components of the related products or any related derivative instruments. The purpose of this filing is to eliminate the requirement that Market Makers must maintain certain specifically prescribed information barrier procedures and thereby conform the standards applicable to the covered products to the standards established with the elimination of NYSE Arca Equities Rule 7.26, the adoption of NYSE Equities Rule 6.7, and the amendment to NYSE Arca Equities Rule 6.18. In so doing, the Exchange also seeks to amend NYSE Arca Rule 6.3 in order to confirm that ETP Holders acting as Market Makers in the covered products (and their affiliates) must establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments. This proposal is consistent with the elimination of Rule 7.26 and the related changes to NYSE Arca Equities Rules 6.7 and 6.18. Removal of these cross references is also consistent with the current approach taken by Nasdaq.[5] Furthermore, the Exchange notes that Market Makers on NYSE Arca must comply with their obligations to maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information.

Example of Rule Text To Be Removed, Commentary .01(a) to Rule 5.2(j)(6)

The following example identifies the typical cross reference to Rule 7.26 and the attendant text that the Exchange proposes to eliminate. Rule 5.2(j)(6) describes the Exchange's listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities. Commentary .01(a) to this rule states:

An ETP Holder acting as a registered Market Maker in Commodity-Linked Securities, Currency-Linked Securities, Futures-Linked Securities or Multifactor Index-Linked Securities, which is composed in part of Commodity or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 60604 (September 1, 2009), 74 FR 46272 (September 8, 2009) (Order approving (i) the removal of NYSE Arca Equities Rule 7.26 "Limitations on Dealings", (ii) the adoption of new NYSE Arca Equities Rule 6.7 "Trading Ahead of Research Reports", and (iii) the amendment of NYSE Arca Equities Rule 6.18 "Supervision").

[4] *Id.*

[5] *See* Nasdaq Rule 5710 (Securities Linked to the Performance of Indexes and Commodities (Including Currencies) and Nasdaq Rule 5740 (Derivative Securities Traded Under Unlisted Trading Privileges).

Currency Reference Assets, is obligated to comply with Rule 7.26 pertaining to limitations on dealings when such Market Maker, or affiliate of such Market Maker, engages in Other Business Activities. For purposes of Commodity-Linked Securities, Currency-Linked Securities, Futures-Linked Securities or Multifactor Index-Linked Securities, if applicable, Other Business Activities shall include acting as a Market Maker or functioning in any capacity involving market-making responsibilities in the Commodity Reference Asset, Currency Reference Asset, or Futures Reference Asset as applicable (Commodity Reference Assets, Currency Reference Assets, and Futures Reference Assets together, "Index Assets"), the components underlying the Reference Asset, the commodities, currencies or futures underlying the Index Asset components, or options, futures or options on futures on the Index Asset, or any other derivatives (collectively, "derivative instruments") based on the Index Asset or based on any Index Asset component or any physical commodity, currency or futures underlying an Index Asset component. However, an approved person of an ETP Holder acting as a registered Market Maker in Commodity-Linked Securities, Currency-Linked Securities, Futures-Linked Securities or Multifactor Index-Linked Securities, if applicable, that has established and obtained Corporation approval of procedures restricting the flow of material, non-public market information between itself and the ETP Holder pursuant to Rule 7.26, and any member, officer or employee associated therewith, may act in a market making capacity, other than as a Market Maker in the Commodity-Linked Securities, Currency-Linked Securities, Futures-Linked Securities or Multifactor Index-Linked Securities, if applicable, on another market center, in the Index Asset components, the commodities, currencies or futures underlying the Index Asset components, or any derivative instruments based on the Index Asset or based on any Index Asset component or any physical commodity, currency or futures underlying an Index Asset component.

The first sentence of this commentary is designed to remind Market Makers on NYSE Arca of their obligation to comply with Rule 7.26 when it engages in "Other Business Activities"—a term that had been defined in Rule 7.26. The second sentence of this commentary defines, in the context of this product, the term "Other Business Activities". The third and final sentence of this commentary reminds Market Makers that, consistent with Rule 7.26, they may act in certain market making capacities if they have established, and obtained the Exchange's approval of, appropriate procedures.

By removing this commentary and applying the standards established by the Order, the Exchange is amending its rules in a manner consistent with the standards previously approved by the Commission.[6] Market Makers must comply with NYSE Arca Equities Rules 6.3 (as revised herein) and 6.18, which prohibit Market Makers from using material non-public information and require all ETP Holders to establish, maintain, and enforce written policies and procedures designed to supervise the business in which it engages and to prevent the misuse of material, non-public information. In this regulatory framework, it is no longer necessary for the Exchange to prescribe specific information barrier procedures. In addition, as revised, the requirements of Rule 5.2(j)(6) are generally consistent with those set forth in Nasdaq Rule 5710.

By eliminating Rule 7.26 and establishing standards similar to Nasdaq's, the Exchange has placed its participants on notice as to their obligations to maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information. Moreover, by revising Rule 6.3, as described herein, ETP Holders acting as Market Makers are on notice that they are prohibited from using material, non-public information. Finally, Market Makers on NYSE Arca (and their affiliates) remain on notice of their obligations to maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information.

Conforming Commentary to NYSE Arca Equities Rule 6.3

The Exchange proposes adding new commentary .04 to Rule 6.3, Prevention of the Misuse of Material, Nonpublic Information. By adding this commentary, described below, the Exchange seeks to extend the requirements of Rule 6.3 regarding each ETP Holder's obligation to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information applies to Market Makers engaged in the trading of securities and/or any derivatives or non security components of any of the products listed and traded on the Exchange pursuant to Rule 5 and Rule 8. The proposed language of commentary .04 to Rule 6.3 is as follows:

ETP Holders acting as a registered Market Maker in products listed under NYSE Arca Equities Rules 5 and 8, and their affiliates, shall also establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments.

With the addition of this commentary, the Exchange proposes to remove similar commentary contained in each of the rules highlighted below. The specific proposed changes, consistent with the example described above, are identified in further as follows.

- NYSE Arca Equities Rule 5.2(j)(6), the Exchange's listing standards for Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities. The Exchange is removing Commentary .01 (a) and (d) and is changing the numbering within the rule to accommodate for this deletion.
- NYSE Arca Equities Rule 8.200, the Exchange's listing standards for Trust Issued Receipts. The Exchange is removing Commentary .02 (e)(1) and (4) and is changing the numbering within the rule to accommodate for this deletion.
- NYSE Arca Equities Rule 8.201, the Exchange's listing standards for Commodity-Based Trust Shares. The Exchange is removing Sections (g) and (i) and is changing the numbering within the rule to accommodate for this deletion.
- NYSE Arca Equities Rule 8.202, the Exchange's listing standards for Currency Trust Shares. The Exchange is removing Sections (g) and (i) and is changing the numbering within the rule to accommodate for this deletion.
- NYSE Arca Equities Rule 8.203, the Exchange's listing standards for Commodity Index Trust Shares. The Exchange is removing Sections (g) and (i) and is changing the numbering within the rule to accommodate for this deletion.
- NYSE Arca Equities Rule 8.204, the Exchange's listing standards for Commodity Futures Trust Shares. The

[6] *See* note 3, *supra.*

Exchange is removing Subsection (f)(1) and (4) and is changing the numbering within the rule to accommodate for this deletion.

- NYSE Arca Equities Rule 8.300, the Exchange's listing standards for Partnership Units. The Exchange is removing Subsection (e)(1) and (4) and is changing the numbering within the rule to accommodate for this deletion.
- NYSE Arca Equities Rule 8.400, the Exchange's listing standards for Paired Trust Shares. The Exchange is removing Subsection (e)(1) and (4) and is changing the numbering within the rule to accommodate for this deletion.
- NYSE Arca Equities Rule 8.500, the Exchange's listing standards for Trust Units. The Exchange is removing Sections (f) and (h) and is changing the numbering within the rule to accommodate for this deletion.
- NYSE Arca Equities Rule 8.700, the Exchange's listing standards for Managed Trust Securities. The Exchange is removing Subsection (f)(1) and (4) and is changing the numbering within the rule to accommodate for this deletion.

Conforming Commentary to NYSE Arca Equities Rule 6.18

Finally, the Exchange is adding new Commentary .02 to NYSE Arca Equities Rule 6.18. Currently, NYSE Arca Equities Rule 6.18 refers to the obligation of an ETP Holder to supervise the business in which it engages as well as the activities of its associated persons. By virtue of the obligations set forth in NYSE Arca Equities Rule 6.3 (as discussed above), however, ETP Holders that are registered Market Makers in products listed under NYSE Arca Equities Rules 5 and 8, must also supervise the activity of its affiliates. The Exchange is hereby adding Commentary .02 in order to conform the supervisory obligations of such ETP Holders to the standards of NYSE Arca Equities Rule 6.3.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, because it 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 facilitating transactions in securities, and 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 Exchange believes that the proposed rule change will eliminate unnecessary confusion in its rule structure, while conforming the standards applicable to covered products regarding the obligations of its participants to maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information to the standards established with the elimination of NYSE Arca Equities Rule 7.26, the adoption of NYSE Equities Rule 6.7, and the amendment to NYSE Arca Equities Rule 6.18.

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[9] and Rule 19b–4(f)(6) thereunder.[10] 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[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

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–2010–35 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–2010–35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 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.

available publicly. All submissions should refer to File Number SR–NYSEArca–2010–35 and should be submitted on or before June 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10967 Filed 5–7–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62029; File No. SR–NASDAQ–2010–053]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the NASDAQ Stock Market LLC to Add Seventy-Five Options Classes to the Penny Pilot Program

May 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on April 27, 2010, The NASDAQ Stock Market LLC ("Nasdaq") 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 Nasdaq. 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

Nasdaq is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to designate seventy-five options classes to be added to the Penny Pilot Program ("Penny Pilot" or "Pilot") on May 3, 2010.[3] The Exchange is not proposing to amend any rule text, but simply administering or enforcing an existing rule.[4]

The text of the proposed rule change is available from Nasdaq's website at *http://nasdaq.cchwallstreet.com/Filings/,* at Nasdaq'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, Nasdaq 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. Nasdaq 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 this filing is to identify the next seventy-five options classes to be added to the Penny Pilot effective May 3, 2010.

In the Exchange's immediately effective filing to extend and expand the Penny Pilot through December 31, 2010,[5] the Exchange proposed expanding the Pilot four times on a quarterly basis. Each such quarterly expansion would be of the next seventy-five most actively traded multiply listed options classes based on the national average daily volume ("ADV") for the six months prior to selection, closing under $200 per share on the Expiration Friday prior to expansion; however, the month immediately preceding the addition of options to the Penny Pilot will not be used for the purpose of the six month analysis. Index option products would be included in the quarterly expansions if the underlying index levels were under 200.

The Exchange is identifying, in the chart below, seventy-five options classes that it will add to the Penny Pilot on May 3, 2010, based on ADVs for the six months ending March 31, 2010.

Nat'l ranking	Symbol	Security name	Nat'l ranking	Symbol	Security name
153	XLV	Health Care Select Sector SPDR Fund	247	JCP	JC Penney Co Inc.
155	CIEN	Ciena Corp	248	ACL	Alcon Inc.
157	AMLN	Amylin Pharmaceuticals Inc	249	STP	Suntech Power Holdings Co Ltd.
158	CTIC	Cell Therapeutics Inc	250	TLB	Talbots Inc.
159	MDT	Medtronic Inc	251	SYMC	Symantec Corp.
162	TIVO	TiVo Inc	253	AMED	Amedisys Inc.
163	MNKD	MannKind Corp	255	TM	Toyota Motor Corp.
171	MDVN	Medivation Inc	257	HK	Petrohawk Energy Corp.
176	BRKB	Berkshire Hathaway Inc	258	ENER	Energy Conversion Devices Inc.
178	APOL	Apollo Group Inc	259	STT	State Street Corp.
181	BSX	Boston Scientific Corp	260	BHP	BHP Billiton Ltd.
185	XLY	Consumer Discretionary Sel. Sec. SPDR Fund.	261	NFLX	NetFlix Inc.
188	CLF	Cliffs Natural Resources Inc	262	LDK	LDK Solar Co Ltd.
190	ZION	Zions Bancorporation	263	SPG	Simon Property Group Inc.
194	IOC	InterOil Corp	264	TIF	Tiffany & Co.
197	ITMN	InterMune Inc	265	BUCY	Bucyrus International Inc.
204	GME	GameStop Corp	266	WAG	Walgreen Co.
209	XLK	Technology Select Sector SPDR Fund	268	IP	International Paper Co.
210	AKS	AK Steel Holding Corp	271	XME	SPDR S&P Metals & Mining ETF.
212	GRMN	Garmin Ltd	272	KGC	Kinross Gold Corp.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008)(SR–NASDAQ–2008–026)(notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009)(SR–NASDAQ–2009–091)(notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009)(SR–NASDAQ–2009–097)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); and 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010)(SR–NASDAQ–2010–013)(notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot).

[4] *See* Chapter VI, Section 5 regarding the Penny Pilot.

[5] *See* Securities Exchange Act Release No. 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness).

Nat'l ranking	Symbol	Security name	Nat'l ranking	Symbol	Security name
213	MRVL	Marvell Technology Group Ltd	273	EP	El Paso Corp.
215	XLP	Consumer Staples Select Sector SPDR Fund	274	SEED	Origin Agritech Ltd.
216	UNP	Union Pacific Corp	275	WIN	Windstream Corp.
220	DTV	DIRECTV	279	DHI	DR Horton Inc.
223	WMB	Williams Cos Inc./The	280	ADBE	Adobe Systems Inc.
225	MEE	Massey Energy Co	281	PCX	Patriot Coal Corp.
227	CELG	Celgene Corp	282	SPWRA	SunPower Corp.
229	GMCR	Green Mountain Coffee Roasters Inc	284	LCC	US Airways Group Inc.
231	WDC	Western Digital Corp	285	PRU	Prudential Financial Inc.
234	DAL	Delta Air Lines Inc	286	LEN	Lennar Corp.
235	FXE	CurrencyShares Euro Trust	287	EWT	iShares MSCI Taiwan Index Fund.
237	COST	Costco Wholesale Corp	288	KBH	KB Home.
239	MJN	Mead Johnson Nutrition Co	289	CREE	Cree Inc.
240	ALL	Allstate Corp/The	290	SIRI	Sirius XM Radio Inc.
241	SII	Smith International Inc	291	MMR	McMoRan Exploration Co.
242	RTN	Raytheon Co	292	CENX	Century Aluminum Co.
243	DVN	Devon Energy Corp	293	GFI	Gold Fields Ltd.
244	MT	ArcelorMittal			

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(5) of the Act [7] in particular, in that it 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by identifying the options classes to be added to the Penny Pilot in a manner consistent with prior approvals and filings.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(i) of the Act [8] and Rule 19b–4(f)(1) thereunder,[9] Nasdaq has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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–NASDAQ–2010–053 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–NASDAQ–2010–053. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. 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–NASDAQ–2010–053 and should be submitted on or before June 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10965 Filed 5–7–10; 8:45 am]

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[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(i).

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62027; File No. SR–ISE–2010–28]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Stopped Orders

May 4, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2010, International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission (the "SEC" or the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement the trade-through exception for stopped orders contained in ISE Rule 1901(b)(8). The text of the rule amendment is as follows (additions are in *italics*):

Rule 715. Types of Orders

(a) no change.

(b) Limit Orders. A limit order is an order to buy or sell a stated number of options contracts at a specified price or better.

(1) through (5) no change.

(6) *Stopped Order. A stopped order is a limit order that meets the requirements of Rule 1901(b)(8). To execute stopped orders, Members must enter them into the Facilitation Mechanism or Solicited Order Mechanism pursuant to Rule 716.*

(c) through (l) no change.

Supplementary Material to Rule 715

.01 no change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 21, 2009, the Commission approved changes to the Exchange's rules related to intermarket linkage. These rules provide, among other things, that transactions not be executed at prices that are inferior to the national best bid or offer (the "trade-through rule"). ISE Rule 1901 (Order Protection) contains several exceptions to the trade-through rule, including an exception for stopped orders. A stopped order is defined as an order for which, at the time of receipt of the order, a member had guaranteed an execution at no worse than a specified price, where: (i) The stopped order was for the account of a Customer; (ii) the Customer agreed to the specified price on an order-by-order basis; and (iii) the price of the Trade-Through was, for a stopped buy order, lower than the national Best Bid in the options series at the time of execution, or, for a stopped sell order, higher than the national Best Offer in the options series at the time of execution.

In order for members to execute trades that qualify for the trade-through exception for stopped order,[3] they must indicate on the order that the order was stopped and enter the order into the Facilitation Mechanism or Solicited Order Mechanism pursuant to Rule 716. While stopped orders will continue to be executed at prices that are at or between the ISE BBO, such orders may receive executions that trade through prices available on other exchanges as permitted by ISE Rule 1901(b)(8).

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and in general, to protect investors and the public interest. In particular, the proposal will provide a means by which members execute orders on the ISE that qualify for the previously approved exception to the trade-through rule.

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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[4] and Rule 19b–4(f)(6) thereunder.[5]

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:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange will surveil for compliance with the terms of the exception. Members must be able to demonstrate compliance with all of the terms of the stopped-order exception. In this respect, the Exchange requests that members indicate the time that the order was stopped on the order ticket.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 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, or such shorted time as designated by the Commission. The Exchange provided a copy of this rule filing to the Commission at least five business days prior to the date of this filing.

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–2010–28 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–2010–28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2010–28 and should be submitted on or before June 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10963 Filed 5–7–10; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62009; File No. SR–Phlx-2010–64]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rebates for Adding and Fees for Removing Liquidity

April 30, 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 April 26, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") 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. Phlx has designated this proposal as one establishing or changing a member due, fee, or other charge imposed 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 proposes to amend the Exchange's Fee Schedule to increase the number of options to be included in the Exchange's current schedule of transaction rebates for adding, and fees for removing, liquidity.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after May 3, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

[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).

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 Exchange proposes to increase liquidity and to attract order flow by increasing the number of options to be included in the Exchange's current schedule of rebates for adding liquidity, and fees for removing liquidity.

Specifically, the Exchange proposes to add the following options: Brocade Communications Systems, Inc. ("BRCD"); International Business Machines Corp., ("IBM"); Nokia Corp. ("NOK"); Sirius XM Radio, Inc. ("SIRI"); and Direxion Daily Small Cap Bear 3X Shares ("TZA") collectively ("the options"). The options would be subject to the rebates for adding and fees for removing liquidity.

The Exchange currently assesses a per-contract transaction charge in various select symbols [5] (the "select Symbols") on six different categories of market participants that submit orders and/or quotes that remove, or "take," liquidity from the Exchange: (i) Specialists, Registered Options Traders ("ROTs"), Streaming Quote Traders ("SQTs") [6] and Remote Streaming Quote

[5] The fees and rebates for adding and removing liquidity are applicable to executions in options overlying AA, AAPL, AIG, ALL, AMD, AMR, AMZN, BAC, C, CAT, CSCO, DELL, DIA, DRYS, EK, F, FAS, FAZ, GDX, GE, GLD, GS, INTC, IWM, JPM, LVS, MGM, MSFT, MU, NEM, PALM, PFE, POT, QCOM, QQQQ, RIMM, SBUX, SKF, SLV, SMH, SNDK, SPY, T, UAUA, UNG, USO, UYG, VZ, WYNN, X and XLF ("Symbols").

[6] An SQT is an Exchange Registered Options Trader ("ROT") who has received permission from the Exchange to generate and submit option quotations electronically through an electronic interface with AUTOM via an Exchange approved proprietary electronic quoting device in eligible options to which such SQT is assigned. *See* Exchange Rule 1014(b)(ii)(A).

Traders ("RSQTs");[7] (ii) customers;[8] (iii) specialists, SQTs and RSQTs that receive Directed Orders ("Directed Participants"[9] or "Directed Specialists, RSQTs, or SQTs"[10]); (iv) Firms; (v) broker-dealers; and (vi) Professionals.[11] The current per-contract transaction charge depends on the category of market participant submitting an order or quote to the Exchange that removes liquidity.

The Exchange also currently assesses a per-contract rebate of transaction charges for orders or quotations that add liquidity in the select Symbols. The amount of the rebate depends on the category of participant whose order or quote was executed as part of the Phlx Best Bid and Offer.

The Exchange proposes to add the five additional options to the list of select Symbols and apply the applicable fees and rebates to these options.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions settling on or after May 3, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(4) of the Act[13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the addition of the options to the rebates for adding and fees for removing liquidity is reasonable and equitable in that it will apply to all categories of participants in the same manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[14] and paragraph (f)(2) of Rule 19b–4[15] 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–2010–64 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2010–64. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2010–64 and should be submitted on or before June 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10961 Filed 5–7–10; 8:45 am]

BILLING CODE 8011–01–P

[7] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[8] This applies to all customer orders, directed and non-directed.

[9] For purposes of the fees and rebates related to adding and removing liquidity, a Directed Participant is a Specialist, SQT, or RSQT that executes a customer order that is directed to them by an Order Flow Provider and is executed electronically on PHLX XL II.

[10] *See* Exchange Rule 1080(l), "* * * The term 'Directed Specialist, RSQT, or SQT' means a specialist, RSQT, or SQT that receives a Directed Order." A Directed Participant has a higher quoting requirement as compared with a specialist, SQT or RSQT who is not acting as a Directed Participant. *See* Exchange Rule 1014.

[11] The Exchange defines a "professional" as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter "Professional").

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62023; File No. SR–CBOE–2010–039]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Trade Options on S&P 500 Annual Dividend Index With an Applied Scaling Factor of 1

May 3, 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 April 28, 2010, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

CBOE proposes to trade options on the S&P 500 Annual Dividend Index with an applied scaling factor of 1. The Exchange is not proposing any rule text changes. The rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Securities and Exchange Commission previously approved CBOE's proposed rule change, as modified Amendment No. 1, to list and trade cash-settled options that overlie the S&P 500 Dividend Index.[5] In the filing, the Exchange stated that the S&P 500 Dividend Index is reported in absolute numbers (*e.g.,* 3, 5, 7) and that the Exchange would apply a scaling factor of 10 to the underlying index. The Exchange proposed the use of the scaling factor in the original filing because it was premised on the S&P 500 Dividend Index representing the accumulated ex-dividend amounts of all S&P 500 Index components over a specified *quarterly* accrual period. The use of a scaling factor was intended to increase the size of the underlying index value because it was expected to be a relatively low value.

In Amendment No. 1, the Exchange proposed to permit varying terms for the accrual period (*e.g.,* quarterly, semi-annually, annually). To date, the Exchange has only designated a quarterly accrual period for S&P 500 Dividend Index options. Beginning May 25, 2010, the Exchange plans to list options on the S&P 500 Annual Dividend Index, an index with a designated annual accrual period.[6] The Exchange plans to list options with a single expiration for each year (*e.g.,* Dec. 2010, Dec. 2011).[7] In the recent past, the final index value (at expiration) has ranged from the low 20s up to the upper 20s. The final value on December 18, 2009 was 22.81. Because the duration of an annual accrual period results in the underlying index value being higher than for lesser duration accrual periods, the Exchange proposes to apply a scaling factor of 1 to the underlying annual index. During each business day, CBOE will disseminate the underlying S&P 500 Annual Dividend Index value with the applied scaling factor of 1 through the Options Price Reporting Authority ("OPRA") and/or one or more major market data vendors.

The use of a scaling factor of 10 was described in the purpose section of the filing and in the contract specifications that were submitted as Exhibit 3; therefore, the Exchange is not proposing any new or revised rule text to affect this change. Exhibit 3 presents revised contract specifications for S&P 500 Annual Dividend Index options.

2. Statutory Basis

The Exchange believes this rule proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act [9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the proposed rule change seeks to permit the Exchange to apply a scaling factor of 1 to options on the S&P 500 Annual Dividend Index, an index with a designated annual accrual period, since the duration of an annual accrual period results in the underlying index value being higher than for lesser duration accrual periods.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 61136 (December 10, 2009), 74 FR 66711 (December 16, 2009) (SR–CBOE–2009–022). The S&P 500 Dividend Index represents the accumulated ex-dividend amounts of all S&P 500 Index component securities over a specified accrual period. Each day Standard & Poor's calculates the aggregate daily dividend totals for the S&P 500 Index component securities, which are summed over any given calendar quarter and are the basis of the S&P 500 Dividend index. On any given day, the index dividend is calculated as the total dividend value for all constituents of the S&P 500 Index divided by the S&P 500 Index divisor. The total dividend value is calculated as the sum of dividends per share multiplied by the shares outstanding for all constituents of the S&P 500 Index that are trading "ex-dividend" on that day.

[6] The Exchange will assign separate trading symbols to options overlying an index with a designated annual accrual period to distinguish them from options overlying an index with a designated quarterly accrual period.

[7] Standard & Poor's has created and now calculates the S&P 500 Annual Dividend Index.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Act[12] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[13] 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 to allow the Exchange to begin listing options overlying the S&P 500 Annual Dividend Index beginning on Tuesday, May 25, 2010.

The Commission believes that acceleration of the operative date is consistent with the protection of investors and the public interest because the Commission has previously considered and approved the listing of options on the S&P 500 Annual Dividend Index and the current proposal raises no new regulatory issues. Acceleration of the operative date will allow the Exchange to list options on the S&P 500 Annual Dividend Index on May 25, 2010, thereby providing investors with an additional investment tool and greater flexibility in meeting their investment objectives without delay. For these reasons, the Commission designates that the proposed rule change become operative on May 25, 2010.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 No. SR–CBOE–2010–039 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–CBOE–2010–039. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2010–039 and should be submitted on or before June 1, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10956 Filed 5–7–10; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] 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. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62014; File No. SR–NYSEAMEX–2010–26]

Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Deleting Rule 446—NYSE Amex Equities and Adopting New Rule 4370—NYSE Amex Equities To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

April 30, 2010.

I. Introduction

On March 11, 2010, NYSE Amex LLC ("NYSE Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] a proposed rule change to delete Rule 446—NYSE Amex Equities and adopt new Rule 4370—NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.[4] The proposed rule change was published for comment in the **Federal Register** on March 26, 2009.[5] The Commission received no comments regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to delete Rule 446—NYSE Amex Equities and adopt new Rule 4370—NYSE Amex Equities to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.[6]

III. Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act, the New York Stock Exchange LLC ("NYSE"), NYSER and FINRA entered into an agreement ("Agreement") to reduce regulatory duplication for their members by

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009) (order approving SR–FINRA–2009–036) ("Release No. 34–60534").

[5] *See* Securities Exchange Act Release No. 61744 (March 19, 2010), 75 FR 14648.

[6] *See* Release No. 34–60534, *supra* note 4.

allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). The Exchange became a party to the Agreement effective December 15, 2008.[7]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[8]

In 2008, FINRA deleted FINRA Incorporated NYSE Rule 446 (Business Continuity and Contingency Plans) as substantively duplicative of NASD Rules 3510 (Business Continuity Plans) and 3520 (Emergency Contact Information).[9] Correspondingly, the Exchange amended Rule 446—NYSE Amex Equities (Business Continuity and Contingency Plans) to remove the existing text and incorporate NASD Rules 3510 and 3520 by reference.[10] Subsequently, FINRA adopted, subject to certain amendments, NASD Rules 3510 and 3520 as consolidated FINRA Rule 4370 (Business Continuity Plans and Emergency Contact Information).[11]

The Exchange correspondingly proposes to delete Rule 446—NYSE Amex Equities and replace it with proposed Rule 4370—NYSE Amex Equities, which is substantially similar to the new FINRA Rule.[12] The Exchange states that the purpose of this is to harmonize the NYSE Amex Equities Rules with the consolidated FINRA Rules. The Exchange states that, as proposed, Rule 4370—NYSE Amex Equities adopts the same language as FINRA Rule 4370, except for substituting for or adding to, as needed, the term "member organization" for the term "member," and making corresponding technical changes that reflect the difference between NYSE Amex's and FINRA's membership structures. The Exchange also states that, in paragraph (f)(2) to proposed NYSE Rule 4370—NYSE Amex Equities, the Exchange has added a cross-reference to Rule 416A—NYSE Amex Equities to ensure that those Exchange members and member organizations that are not FINRA members are required to update the contact information for emergency personnel in accordance with NYSE Amex Equities Rules.

The Exchange also proposes to add Supplementary Material .01 to Rule 4370—NYSE Amex Equities to provide that, for the purposes of the rule, the term "associated person" shall have the same meaning as the terms "person associated with a member" or "associated person of a member" as defined in Article I (rr) of the FINRA By-Laws. The Exchange states that this change is necessary to ensure that both proposed Rule 4370—NYSE Amex Equities and FINRA Rule 4370 are fully harmonized.

Finally, the Exchange proposes that the effective date for the proposed rule changes be retroactive to December 14, 2009, the same effective date for the corresponding FINRA rule changes.[13] As a result, there should be no regulatory gaps between the FINRA and NYSE Amex Equities Rules and that, as applicable, the NYSE Amex Equities Rules would maintain their status as Common Rules under the Agreement.[14]

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of, a free and open market and a national market system, and in general, to protect investors and the public interest.[16]

The Commission believes that the proposed rule change provides greater harmonization between NYSE Amex Equities Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for NYSE Amex members. In addition, the Commission believes that retroactive application of the proposed rule change to December 14, 2009, is appropriate to assure that there are no regulatory gaps between FINRA and NYSE Amex Equities Rules, and that, as applicable, the NYSE Amex Rules would maintain their status as Common Rules under the Agreement.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSEAmex–2010–26), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10952 Filed 5–7–10; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as "Common Rules"); *and* 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

[8] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE, while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[9] *See* Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (order approving SR–FINRA–2008–036).

[10] *See* Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (order approving SR–NYSEALTR–2008–10).

[11] *See* Release No. 34–60534, *supra* note 4.

[12] New York Stock Exchange LLC submitted a companion rule filing amending its rules in accordance with FINRA's rule changes, which the Commission has approved. *See* Securities Exchange Act Release No. 62015 (April 30, 2010)(SR–NYSE–2010–23).

[13] *See* FINRA Regulatory Notice 09–60 (October 15, 2009).

[14] As provided in paragraph 2(b) of the Agreement, FINRA and NYSE will amend the list of Common Rules to conform to the rule changes proposed herein.

[15] 15 U.S.C. 78f(b)(5).

[16] In approving the 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).

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62015; File No. SR–NYSE–2010–23]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Deleting NYSE Rule 446 and Adopting New Rule 4370 To Correspond With Rule Changes Filed by the Financial Industry Regulatory Authority, Inc.

April 30, 2010.

I. Introduction

On March 11, 2010, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act

of 1934 (the "Act"),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to delete NYSE Rule 446 and adopt new Rule 4370 to correspond with rule changes filed by the Financial Industry Regulatory Authority, Inc. ("FINRA") and approved by the Commission.[4] The proposed rule change was published for comment in the **Federal Register** on March 26, 2010.[5] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to delete NYSE Rule 446 and adopt new Rule 4370 to correspond with rule changes filed by FINRA and approved by the Commission.[6]

Background

On July 30, 2007, FINRA's predecessor, the National Association of Securities Dealers, Inc. ("NASD"), and NYSE Regulation, Inc. ("NYSER") consolidated their member firm regulation operations into a combined organization, FINRA. Pursuant to Rule 17d–2 under the Act, NYSE, NYSER and FINRA entered into an agreement (the "Agreement") to reduce regulatory duplication for their members by allocating to FINRA certain regulatory responsibilities for certain NYSE rules and rule interpretations ("FINRA Incorporated NYSE Rules"). NYSE Amex LLC ("NYSE Amex") became a party to the Agreement effective December 15, 2008.[7]

As part of its effort to reduce regulatory duplication and relieve firms that are members of FINRA, NYSE and NYSE Amex of conflicting or unnecessary regulatory burdens, FINRA is now engaged in the process of reviewing and amending the NASD and FINRA Incorporated NYSE Rules in order to create a consolidated FINRA rulebook.[8]

In 2008, FINRA deleted FINRA Incorporated NYSE Rule 446 (Business Continuity and Contingency Plans) as substantively duplicative of NASD Rules 3510 (Business Continuity Plans) and 3520 (Emergency Contact Information).[9] Correspondingly, the Exchange amended NYSE Rule 446 (Business Continuity and Contingency Plans) to remove the existing text and incorporate NASD Rules 3510 and 3520 by reference.[10] Subsequently, FINRA adopted, subject to certain amendments, NASD Rules 3510 and 3520 as consolidated FINRA Rule 4370 (Business Continuity Plans and Emergency Contact Information).[11]

The Exchange correspondingly proposes to delete NYSE Rule 446 and replace it with proposed NYSE Rule 4370, which is substantially similar to the new FINRA Rule.[12] The Exchange states that the purpose of this proposed rule change is to harmonize the NYSE Rules with the consolidated FINRA Rules. The Exchange states that, as proposed, NYSE Rule 4370 adopts the same language as FINRA Rule 4370, except for substituting for or adding to, as needed, the term "member organization" for the term "member," and making corresponding technical changes that reflect the difference between NYSE's and FINRA's membership structures. The Exchange also states that, in paragraph (f)(2) to proposed NYSE Rule 4370, the Exchange has added a cross-reference to NYSE Rule 416A to ensure that those Exchange members and member organizations that are not FINRA members are required to update the contact information for emergency personnel in accordance with NYSE Rules.

The Exchange also proposes to add Supplementary Material .01 to NYSE Rule 4370 to provide that, for the purposes of the rule, the term "associated person" shall have the same meaning as the terms "person associated with a member" or "associated person of a member" as defined in Article I (rr) of the FINRA By-Laws. The Exchange states that this change is necessary to ensure that both proposed NYSE Rule 4370 and FINRA Rule 4370 are fully harmonized.

Finally, the Exchange proposes that the effective date for the proposed rule changes be retroactive to December 14, 2009, the same effective date for the corresponding FINRA rule changes.[13] As a result, there should be no regulatory gaps between the FINRA and NYSE Rules and that, as applicable, the NYSE Rules would maintain their status as Common Rules under the Agreement.[14]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.[16]

The Commission believes that the proposed rule change provides greater harmonization between NYSE Rules and FINRA Rules (including Common Rules) of similar purpose, resulting in less burdensome and more efficient regulatory compliance for NYSE members, including Dual Members. In addition, the Commission believes that retroactive application of the proposed rule change to December 14, 2009 is appropriate to assure that there are no regulatory gaps between FINRA and NYSE Rules, and that, as applicable, the NYSE Rules would maintain their status as Common Rules under the Agreement.

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009) (order approving SR–FINRA–2009–036) ("Release No. 34–60534").

[5] *See* Securities Exchange Act Release No. 61743 (March 19, 2010), 75 FR 14650.

[6] *See* Release No. 34–60534, *supra* note 4.

[7] *See* Securities Exchange Act Release Nos. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (order approving the Agreement); 56147 (July 26, 2007), 72 FR 42166 (August 1, 2007) (SR–NASD–2007–054) (order approving the incorporation of certain NYSE Rules as "Common Rules"); *and* 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (order approving the amended and restated Agreement, adding NYSE Amex LLC as a party). Paragraph 2(b) of the Agreement sets forth procedures regarding proposed changes by FINRA, NYSE or NYSE Amex to the substance of any of the Common Rules.

[8] FINRA's rulebook currently has three sets of rules: (1) NASD Rules, (2) FINRA Incorporated NYSE Rules, and (3) consolidated FINRA Rules. The FINRA Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"), while the consolidated FINRA Rules apply to all FINRA members. For more information about the FINRA rulebook consolidation process, *see* FINRA Information Notice, March 12, 2008.

[9] *See* Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) (order approving SR–FINRA–2008–036).

[10] *See* Securities Exchange Act Release No. 58549 (September 15, 2008), 73 FR 54444 (September 19, 2008) (order approving SR–NYSE–2008–080).

[11] *See* Release No. 34–60534, *supra* note 4.

[12] NYSE Amex submitted a companion rule filing amending its rules in accordance with FINRA's rule changes, which the Commission has approved. *See* Securities Exchange Act Release No. 62014 (April 30, 2010) (SR–NYSE–Amex–2010–26).

[13] *See* FINRA Regulatory Notice 09–60 (October 15, 2009).

[14] As provided in paragraph 2(b) of the Agreement, FINRA and NYSE will amend the list of Common Rules to conform to the rule changes proposed herein.

[15] 15 U.S.C. 78f(b)(5).

[16] In approving the 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).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–NYSE–2010–23) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10953 Filed 5–7–10; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; as Amended; Proposed Alteration to an Existing Privacy Act System of Records, Housekeeping Changes, and New Routine Uses

AGENCY: Social Security Administration (SSA).

ACTION: Altered system of records, housekeeping changes, and routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)) we are issuing public notice of our intent to alter an existing system of records, make housekeeping and other miscellaneous changes, and add routine uses applicable to our system of records entitled the *Representative Disqualification/Suspension Information System (60–0219),* hereinafter referred to as the *Representative Disqualification, Suspension, and Non-Recognition Information File.*

We propose the following changes:

- Expand the existing category of representatives covered by the *Representative Disqualification, Suspension, and Non-Recognition Information File* system of records to include persons who allegedly fail to meet our qualifications to serve as a claimant's representative.
- Expand the category of records we maintain in the system to include the name, Social Security number (SSN), date of birth, address, and other relevant information about persons who want to serve as representatives for our claimants. The expanded category will also include information about representatives, such as the representative's date of birth, SSN, representative identification number, telephone and facsimile (fax) numbers, and e-mail address.

We will also include the type of representative (*e.g.,* attorney, non-attorney, eligible direct pay non-attorney), attorney status (*e.g.,* suspended, disqualified, convicted of a violation), bar, court, and Federal agency program admission information (*e.g.,* year admitted, license number, present standing, and disciplinary history), and employer identification number.

- Expand the record storage medium to house records in paper and electronic form.
- Change the system of records name from the *Representative Disqualification/Suspension Information System* to the *Representative Disqualification, Suspension, and Non-Recognition Information File* to more accurately reflect the persons and representatives covered by the system of records.
- Add new routine uses 2–4, 6, and 8–10 to allow us to release information about persons who allegedly fail to meet our qualifications to serve as a claimant's representative, representatives whom we have disqualified or suspended from representing claimants and beneficiaries before us, and pursue the investigation of, and litigation against, representatives alleged to have violated the provisions of the Social Security Act or our regulations. We are also adding our data protection routine use to the system of records. The routine use, listed as number 12 in this system of records, will allow us to respond to incidents involving the unintentional release of our records.
- Make edits throughout the document to ensure a more reader-friendly document and correct miscellaneous and stylistic format errors.

We discuss the system of records, housekeeping changes, and new routine uses in the Supplementary Information section below. We invite public comments on this proposal.

DATES: We filed a report of the *Representative Disqualification, Suspension, and Non-Recognition Information File* system of records and new routine use disclosures with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Oversight and Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), on April 29, 2010. The altered *Representative Disqualification, Suspension, and Non-Recognition Information File* system of records and new routine uses will become effective on June 7, 2010, unless we receive comments before that date that would result in a contrary determination.

ADDRESSES: Interested persons may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments we receive will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Christine W. Johnson, Social Insurance Specialist (Senior Analyst), Disclosure Policy Development and Services Division I, Office of Privacy and Disclosure, Office of the General Counsel, Social Security Administration, 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, *telephone:* (410) 965–8563 or *e-mail: chris.w.johnson@ssa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Representative Disqualification, Suspension, and Non-Recognition Information File System of Records

A. General Background

The *Representative Disqualification, Suspension, and Non-Recognition Information File* system of records allows us to collect, maintain, and use information about persons who fail to meet our qualifications to serve as representatives for our claimants and beneficiaries, representatives about whom we have received complaints alleging that they have violated the provisions of the Social Security Act or regulations, and representatives who we have disqualified or suspended from representing claimants and beneficiaries in matters before us.

We require the information covered by this system of records to efficiently administer the disqualified or suspended representative business process. For example, the information enables us to identify and monitor persons who fail to meet the criteria to represent our claimants and beneficiaries, determine whether a violation has occurred, investigate alleged violations, and administratively prosecute disciplinary actions against representatives, in a more efficient and timely manner.

B. Discussion of Representative Disqualification, Suspension, and Non-Recognition Information File System of Records

The proposed alteration will significantly strengthen the disqualified

and suspended representative business process. The alteration brings together key information that will not only increase our communication and response efficiency, it will also improve accuracy and efficiency in the way we administer the overall disqualified and suspended representative process.

C. Discussion of New Routine Uses

New routine uses 2–4, 6, and 8–10 will enhance our ability to investigate and administratively prosecute disciplinary actions against representatives whom we suspect have violated the Social Security Act or regulations. The routine uses will also expand our ability to inform members of the public and other interested parties that we have disqualified or suspended a representative, or not recognized a person as a claimant's representative.

New data protection routine use number 12 will allow us to disclose information in connection with response and remediation efforts in the event of unintentional release of agency information (a data security breach). Such a routine use serves to protect the interests of the people whose information is at risk by allowing us to take appropriate steps to facilitate a timely and effective response to a data breach. (*See* 72 FR 69723 (December 10, 2007).)

Accordingly, we are establishing routine uses 2–4, 6, 8–10, and 12 in the *Representative Disqualification, Suspension, and Non-Recognition Information File* system of records:

2. To a Federal court, State court, administrative tribunal, or bar disciplinary authority in the Federal jurisdiction(s) or State(s) in which an attorney is admitted to practice that we have disqualified or suspended the attorney from representing claimants or beneficiaries before us, and the basis for our action.

We will disclose information under this routine use to Federal and State entities for the purpose of, and to the extent necessary, to inform the entity about the status of, and infractions against, attorneys that we have prohibited from representing our claimants and beneficiaries. We may also disclose information under this routine use for the purpose of assisting the entity to carry out its own investigative and administrative actions.

3. To an official or employee of a Federal, State, or local agency that we have disqualified or suspended a representative from representing claimants and beneficiaries before us, and the basis for our action in order to permit that agency to perform its official duties related to representation of parties before that agency.

We will disclose information under this routine use to a Federal, State, or local entity for the purpose of, and to the extent necessary, to inform the entity about the status of, and infractions against, representatives that we have prohibited from representing our claimants. We may also disclose information under this routine use for the purpose of enabling the entity to determine whether to take independent action.

4. To any person or entity from which we need information to pursue the investigation or litigation of any action against a representative, to the extent necessary to identify the representative about whom the record is maintained, inform the person or entity of the purpose(s) of the request, and identify the type of information needed.

We will disclose information under this routine use to any person or entity for the purpose of, and to the extent necessary, to identify the representative of record, explain the purpose of our request, and identify the type of information we need to facilitate our investigation of, or litigation against, the representative.

6. To the Department of Justice, the Federal Bureau of Investigation, Offices of United States Attorneys, and other Federal law enforcement agencies, for investigation and potential prosecution of violations of the Social Security Act.

We will disclose information under this routine use to the above Federal entities for the purpose of, and to the extent necessary, to effectively represent us in matters concerning violations of the Social Security Act.

8. To the public via our Internet Web site located at *http://www.socialsecurity.gov* that we have disqualified or suspended a representative from representation before us, or not recognized a person as a claimant's representative.

We will disclose certain information under this routine use to the public for the purpose of informing the public about persons and representatives not authorized to represent claimants before us. We disclose this type information to allow the public to make more informed decisions about potential representatives and to prevent ineligible representatives from representing our claimants.

9. To persons, groups, organizations, or government entities that routinely refer potential claimants or beneficiaries to attorneys or persons other than attorneys for the purpose of putting such persons, groups, organizations, or government entities on notice that we have disqualified or suspended a representative from representation before us, or not recognized a person as a claimant's representative.

We will disclose information under this routine use to persons, groups, organizations, or government entities for the purpose of, and to the extent necessary, to inform them about the status of, and infractions against, representatives that we have prohibited from representing our claimants. We disclose information under this routine use for the purpose of ensuring that only qualified persons and representatives are referred to our claimants and beneficiaries.

10. To any person or entity with whom the representative is affiliated or has indicated that he or she wants to be affiliated in representing claimants before us, for notifying them that we have disqualified or suspended the affiliated or potentially affiliated representative from representation before us, or not recognized that person as a claimant's representative.

We will disclose information under this routine use to current and prospective affiliations of the representative for the purpose of, and extent necessary, to convey that the representative has lost the privilege to represent our claimants or failed to meet our criteria to be recognized as a claimant's representative.

12. To the appropriate Federal, State, and local agencies, entities, and persons when: (1) We suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we determine that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, risk of identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. We will use this routine use to respond to those incidents involving an unintentional release of our records.

We will disclose information under this routine use specifically in connection with response and remediation efforts in the event of an unintentional release of agency information, otherwise known as a "data security breach." This routine use will protect the interests of the people whose information is at risk by allowing us to take appropriate steps to facilitate a

timely and effective response to a data breach. The routine use will also help us improve our ability to prevent, minimize, or remedy any harm that may result from a compromise of data covered by this system of records.

II. Compatibility of Proposed Routine Uses

New routine uses 2–4, 6, and 8–10 will allow us to release information about representatives whom we have disqualified or suspended from representing claimants and persons we have not recognized as a claimant's representative. The routine uses will also improve our ability to investigate and administratively prosecute actions against representatives whom we suspect have violated the Social Security Act or our regulations. In accordance with the Privacy Act (5 U.S.C. 552a(a)(7) and (b)(3)) and our disclosure regulations (20 CFR part 401), we can disclose information maintained in a system of records pursuant to a published routine use when the use is compatible with the purpose for which we collected the information. These routine uses meet the relevant regulatory criteria.

New data protection routine use number 12 will allow us to respond to incidents involving the unintentional release of our records. As mandated by OMB and recommended by the President's Identity Theft Task Force, and in accordance with the Privacy Act and our disclosure regulations, we are permitted to release information under a published routine use for a compatible purpose. Section 401.120 of our regulations provides that we will disclose information required by law. Since OMB has mandated its publication, this routine use is appropriate and meets the relevant statutory and regulatory criteria. In addition, we disclose to other agencies, entities, and persons, when necessary, to respond to an unintentional release. These disclosures are compatible with the reasons we collect the information, as helping to prevent and minimize the potential for harm is consistent w ith taking appropriate steps to protect information entrusted to us. *See* 5 U.S.C. 552a(e)(10).

III. Records Storage Medium and Safeguards for the Information Covered by the Representative Disqualification, Suspension, and Non-Recognition Information File System of Records

We will maintain, in paper and electronic form, information covered by the *Representative Disqualification, Suspension, and Non-Recognition Information File* system of records. We will keep paper records in locked cabinets or in other secure areas. We will safeguard the security of the electronic information covered by the *Representative Disqualification, Suspension, and Non-Recognition Information File* system of records by requiring the use of access codes to enter the computer system that will house the data.

We annually provide all our employees and contractors with appropriate security awareness training that includes reminders about the need to protect personally identifiable information and the criminal penalties that apply to unauthorized access to, or disclosure of, personally identifiable information. *See* 5 U.S.C. 552a(i)(1). Employees and contractors with access to databases maintaining personally identifiable information must sign a sanction document annually, acknowledging their accountability for inappropriately accessing or disclosing such information.

IV. Effects of the Representative Disqualification, Suspension, and Non-Recognition Information File System of Records and Routine Use Disclosures on the Rights of Individuals

A. Discussion Relating to the Alteration

We propose altering the *Representative Disqualification, Suspension, and Non-Recognition Information File* system of records as part of our responsibilities in continuing to expand our business processes and protecting our claimants. We will adhere to all applicable statutory requirements, including those under the Social Security Act and the Privacy Act, in carrying out our responsibilities. Therefore, we do not anticipate that the proposed alteration to this system of records will have any adverse effect on the privacy or other rights of the persons or representatives covered by the system of records.

B. Discussion Relating to the New Routine Uses

The new routine uses will enable us to investigate and take action against disqualified or suspended representatives, expand our ability to inform members of the public and other interested parties that we have disqualified, suspended, or not recognized a person as a claimant's representative, and serve to protect the interests of representatives whose information could be at risk. As a result, we do not anticipate that the new routine uses will have any adverse effect on the rights of persons or representatives whose data might be disclosed.

V. Housekeeping and Other Miscellaneous Changes in the Representative Disqualification, Suspension, and Non-Recognition Information File System of Records

We are making housekeeping changes that include changing the system of records name from *Representative Disqualification/Suspension Information System* to the *Representative Disqualification, Suspension, and Non-Recognition Information File* system of records to more accurately reflect the persons and representatives covered by the system. The changes also include editing throughout the document to ensure a more reader-friendly document and correcting miscellaneous and stylistic format errors.

Dated: April 29, 2010.

Michael J. Astrue,

Commissioner.

Social Security Administration

Notice of System of Records; Required by the Privacy Act of 1974; as Amended

SYSTEM NUMBER:

60–0219.

SYSTEM NAME:

Representative Disqualification, Suspension and Non-Recognition Information File, Social Security Administration, Office of the General Counsel.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of the General Counsel, Office of General Law, 6401 Security Boulevard, Room 617 Altmeyer Building, Baltimore MD 21235, and Regional Chief Counsels Offices as follows:

OGC Boston, Room 625, JFK Federal Building, Boston, MA 02203.

OGC New York, 26 Federal Plaza, Room 3904, New York, NY 10278.

OGC Philadelphia, 300 Spring Garden Street, 6th Floor, Philadelphia, PA 19123.

OGC Atlanta, Atlanta Federal Center, 61 Forsyth Street SW., Suite 20T45, Atlanta, GA 30303.

OGC Chicago, 200 W. Adams Street, 30th Floor, Chicago, IL 60606.

OGC Dallas, 1301 Young Street, Room A–702, Dallas, TX 75202–5433.

OGC Kansas City, 601 East 12th Street, Room 965, Federal Office Building, Kansas City, MO 64106.

OGC Denver, 1961 Stout Street, Federal Office Building, 10th Floor, Denver, CO 80294.

OGC San Francisco, 333 Market Street, Suite 1500, San Francisco, CA 94105–2116.

OGC Seattle, 701 Fifth Avenue, Suite 2900 M/S 901, Seattle, WA 98104–7075.

CATEGORIES OF PERSONS COVERED BY THE SYSTEM:

This system covers persons who allegedly fail to meet our qualifications to serve as a claimant's representative, as provided by the Social Security Act or regulations relating to representation of claimants and beneficiaries before us. It includes representatives alleged to have violated the provisions of the Social Security Act or our regulations relating to representation of claimants and beneficiaries, representatives whom we have found to have committed such violations and have disqualified or suspended, and representatives we have investigated, but have not disqualified or suspended because we resolved the matter without an action to disqualify or suspend the representative or because we found that a violation did not occur.

CATEGORIES OF RECORDS IN THE SYSTEM:

As applicable, the system will contain information about persons seeking to represent our claimants as well as representatives who have represented claimants and beneficiaries before us. For example, we collect name, date of birth, Social Security number (SSN), representative identification number, home or business address(es), telephone and facsimile (fax) numbers, e-mail address, and type of representative (*e.g.,* attorney, non-attorney, eligible direct pay non-attorney).

The system will also contain information about the representative's legal standing and business affiliations. For example, we collect status of the representative (*e.g.,* suspended, disqualified), bar, court, and Federal program or agency admission information (*e.g.,* year admitted, license number, present standing, and disciplinary history), copies of all documentation resulting from our investigation and actions taken due to violations of the Social Security Act and regulations relating to the representative, and employer identification number. The system will also maintain relevant claimant and beneficiary information.

The following are examples of information covered by this system of records relating to the representation of claimants and beneficiaries: Documentation resulting from our investigation or actions taken due to violations of the Social Security Act or our regulations; Documentation relating to any request for recognition or reinstatement that a non-recognized person or disqualified or suspended representative files with us; documentation pertaining to hearings on charges of alleged violations of the Social Security Act or our regulations; and representation attestations made and information provided on our paper and electronic forms.

The system may also contain documentation pertaining to Appeals Council reviews of the decisions rendered in hearings on charges of violations of the Social Security Act or our regulations, or of requests for reinstatement to practice as a claimant's representative before us; copies of notifications of a representative's disqualification or suspension or a person's non-recognition; documentation pertaining to any legal or administrative action that a disqualified or suspended representative, or non-recognized person brings against us; and documentation of any disclosures made pursuant to the routine uses in this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 206(a) and 1631(d)(2) of the Social Security Act (42 U.S.C. 406(a) and 1383(d)(2)).

PURPOSE(S):

The *Representative Disqualification, Suspension, and Non-Recognition Information File* system of records provides us real-time access to information key to decisionmaking in the disqualified or suspended representative business process. For example, the records provide timely access to information we need to make decisions about whether persons meet our qualifications to serve as a claimant's representative and whether violations of the provisions of the Social Security Act or regulations relating to representation have previously occurred.

The records also enable us to more efficiently investigate alleged administrative or criminal violations; take action against representatives; respond to the Appeals Council when a representative has requested reinstatement; provide detailed notice of, and information on, cases in which we have disqualified or suspended a representative; and assist the Department of Justice in Federal court litigation, including that which relates to our decision to disqualify or suspend a representative or not recognize a person as a claimant's representative.

ROUTINE USES OF RECORDS COVERED BY THE REPRESENTATIVE DISQUALIFICATION, SUSPENSION, AND NON-RECOGNITION INFORMATION FILE SYSTEM OF RECORDS SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use disclosures are indicated below; however, we will not disclose any information defined as "return or return information" under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) unless authorized by the IRC, the Internal Revenue Service (IRS), or IRS regulations.

1. To applicants for benefits or payments, claimants, and beneficiaries to inform them that we have disqualified or suspended the representative from further representation before us or that the person was not recognized as a representative, and the basis for our action.

2. To a Federal court, State court, administrative tribunal, or bar disciplinary authority in the Federal jurisdiction(s) or State(s) in which an attorney is admitted to practice that we have disqualified or suspended the attorney from representing claimants or beneficiaries before us and the basis for our action.

3. To an official or employee of a Federal, State, or local agency that we have disqualified or suspended a claimant's representative from representing claimants and beneficiaries before us, and the basis for our action in order to permit that agency to perform its official duties related to representation of parties before that agency.

4. To any person or entity from which we need information to pursue the investigation or litigation of any action against a representative, to the extent necessary to identify the representative about whom the record is maintained, inform the person or entity of the purpose(s) of the request, and identify the type of information needed.

5. To the Department of Justice (DOJ), a court, other tribunal, or another party before such court or tribunal when:

(a) SSA or any of our components;

(b) Any SSA employee in his or her official capacity;

(c) Any SSA employee in his or her individual capacity when DOJ (or SSA when we are authorized to do so) has agreed to represent the employee; or

(d) The United States, or any agency thereof when we determine that the litigation is likely to affect the operations of SSA or any of its components, is a party to litigation or has an interest in such litigation, and we determine that the use of such records

by DOJ, the court, other tribunal, or another party before such court or tribunal is relevant and necessary to the litigation. In each case, however, we must determine that such disclosure is compatible with the purpose for which we collected the records.

6. To DOJ, the Federal Bureau of Investigation, Offices of United States Attorneys, and other Federal law enforcement agencies, for investigation and potential prosecution of violations of the Social Security Act.

7. To a congressional office in response to an inquiry from that office made at the request of the subject of the record or a third party on that person's behalf.

8. To the public via our Internet Web site located at *http://www.socialsecurity.gov* that we have disqualified or suspended a representative from representation before us, or not recognized a person as a claimant's representative.

9. To persons, groups, organizations, or government entities that routinely refer potential claimants or beneficiaries to attorneys or persons other than attorneys for the purpose of putting such persons, groups, organizations or government entities on notice that we have disqualified or suspended a representative from representation before us, or not recognized a person as a claimant's representative.

10. To any person or entity with whom the representative is affiliated or has indicated that he or she wants to be affiliated in representing claimants before us, notice that we have disqualified or suspended the affiliated or potentially affiliated representative from representation before us, or not recognized that person as a claimant's representative.

11. To the General Services Administration and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act, information that is not restricted from disclosure by Federal law for their use in conducting records management studies.

12. To the appropriate Federal, State, and local agencies, entities, and persons when: (1) We suspect or confirm that the security or confidentiality of information in this system of records has been compromised; (2) we determine that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, risk of identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (3) we determine that disclosing the information to such agencies, entities, and persons is necessary to assist in our efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. We will use this routine use to respond only to those incidents involving an unintentional release of our records.

13. To the Office of the President in response to an inquiry made at the request of the subject of the record or a third party on that person's behalf.

14. To student volunteers, persons working under a personal services contract, and others who are not technically Federal employees, when they are performing work for us as authorized by law, and they need access to information in our records in order to perform their assigned duties.

15. To Federal, State, and local law enforcement agencies and private security contractors as appropriate, information as necessary:

(a) To enable them to assure the safety of our employees and customers, and the security of our workplace, and the operation of our facilities; or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of our facilities.

16. To contractors and other Federal agencies, as necessary, for the purpose of assisting us in the efficient administration of our programs. We will disclose information under the routine use only in situations in which we may enter into a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

We will store records in this system in paper and electronic form.

RETRIEVABILITY:

We will retrieve records by SSN, representative identification number, or alphabetically by the representative's name.

SAFEGUARDS:

We retain paper and electronic files with personal identifiers in secure storage areas accessible only to our authorized employees and contractors. We limit access to data with personal identifiers from this system to only authorized personnel who have a need for the information in the performance of their official duties. We annually provide all of our employees and contractors with appropriate security awareness training that includes reminders about the need to protect personally identifiable information and the criminal penalties that apply to unauthorized access to, or disclosure of, personally identifiable information. *See* 5 U.S.C. 552a(i)(l). Employees and contractors with access to databases maintaining personally identifiable information must sign a sanction document annually, acknowledging their accountability for inappropriately accessing or disclosing such information.

RETENTION AND DISPOSAL:

For purposes of records management dispositions authority, we follow the NARA and Department of Defense (DOD) 5015.2 regulations (DOD Design Criteria Standard for Electronic Records Management Software Applications). We will retain for 25 years records about the non-recognition of a person, the disqualification or suspension of a representative, and the investigation of representatives that we did not suspend or disqualify because we were able to resolve the matter without a disqualification or suspension. We will maintain for 2 years from the date of closure those records that indicate we investigated a representative, but did not disqualify or suspend the representative because we found that a violation did not occur. We will erase or destroy records in electronic form and shred records in paper form.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Associate General Counsel for General Law, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235. Regional Chief Counsels (*see* addresses in the System Location section of this notice).

NOTIFICATION PROCEDURES:

Persons can determine if this system contains a record about them by writing to the system manager at the above address and providing their name, SSN, or other information in this system of records that will identify them. Persons requesting notification by mail must include a notarized statement to us to verify their identity or they must certify in the request that they are the person they claim to be and understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense.

Persons requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a

photograph, such as a driver's license. Persons lacking identification documents sufficient to establish their identity must certify in writing that they are the person they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another person under false pretenses is a criminal offense.

Persons requesting notification by telephone must verify their identity by providing identifying information that parallels the information in the record to which notification is being requested. If we determine that the identifying information the person provides by telephone is insufficient, the person will be required to submit a request in writing or in person. If a person requests information by telephone on behalf of another person, the subject person must be on the telephone with the requesting person and us in the same telephone call. We will establish the subject person's identity (his or her name, SSN, address, date of birth, and place of birth, along with one other piece of information, such as mother's maiden name) and ask for his or her consent to provide information to the requesting person. These procedures are in accordance with our regulations (20 CFR 401.40 and 401.45).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters also should reasonably specify the record contents they are seeking. These procedures are in accordance with our regulations (20 CFR 401.40(c)).

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters also should reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with our regulations (20 CFR 401.65(a)).

RECORD SOURCE CATEGORIES:

We obtain information covered by this system of records from existing records we maintain (*e.g.,* the Claims Folder System, 60–0089), which contain information relating to the representation of claimants before us.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–10668 Filed 5–7–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 6992; OMB Control Number 1405–0091]

60-Day Notice of Proposed Information Collection: Form DS–117, Application To Determine Returning Resident Status

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Application to Determine Returning Resident Status.
- *OMB Control Number:* 1405–0091.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).
- *Form Number:* DS–117.
- *Respondents:* Aliens applying for special immigrant classification as a returning resident.
- *Estimated Number of Respondents:* 875 per year.
- *Estimated Number of Responses:* 875.
- *Average Hours per Response:* 30 minutes.
- *Total Estimated Burden:* 438 hours per year.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from May 10, 2010.

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

- *E-mail: VisaRegs@state.gov* (Subject line must read DS–117 Reauthorization).
- *Mail (paper, disk, or CD–ROM submissions):* Chief, Legislation and Regulation Division, Visa Services—DS–0117 Reauthorization, 2401 E Street, NW., Washington, DC 20520–30106.
- *Fax:* (202) 663–3898.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Lauren Prosnik of the Office of Visa Services, U.S. Department of State, 2401 E Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2951.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Form DS–117 is used by consular officers to determine the eligibility of an alien applicant for special immigrant status as a returning resident.

Methodology: Information will be collected by mail.

Dated: April 19, 2010.

Edward J. Ramotowski,

Acting Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2010–11020 Filed 5–7–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 6991]

60-Day Notice of Proposed Information Collection: Form DS–156K, Nonimmigrant Fiancé(e) Visa Application, OMB Control Number 1405–0096

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Nonimmigrant Fiancé(e) Visa Application.
- *OMB Control Number:* 1405–0096.
- *Type of Request:* Extension of a Currently Approved Collection.

• *Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO).
• *Form Number:* DS–156K.
• *Respondents:* Aliens applying for a nonimmigrant visa to enter the U.S. as the fiancé(e) of a U.S. citizen.
• *Estimated Number of Respondents:* 35,000.
• *Estimated Number of Responses:* 35,000.
• *Average Hours per Response:* 1 hour.
• *Total Estimated Burden:* 35,000 hours per year.
• *Frequency:* Once per respondent.
• *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from May 10, 2010.

ADDRESSES: You may submit comments by any of the following methods:
• *E-mail: VisaRegs@state.gov* (Subject line must read DS–156K Reauthorization).
• *Mail (paper, disk, or CD–ROM submissions):* Chief, Legislation and Regulation Division, Visa Services—DS–156K Reauthorization, 2401 E Street, NW., Washington, DC 20520.
• *Fax:* (202) 663–3898.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Lauren Prosnik of the Office of Visa Services, U.S. Department of State, 2401 E Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2951.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Form DS–156K is used by consular officers to determine the eligibility of an alien applicant for a non-immigrant fiancé(e) visa.

Methodology: The DS–156K is submitted to consular posts abroad.

Dated: April 19, 2010.

Edward J. Ramotowski,

Deputy Assistant Secretary, Acting Bureau of Consular Affairs, Department of State.

[FR Doc. 2010–11022 Filed 5–7–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice: 6994]

60-Day Notice of Proposed Information Collection: DS–1648, Application for A, G, or NATO Visa, OMB No. 1405–0100

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* Application for A, G, or NATO Visa.
• *OMB Control Number:* 1405–0100.
• *Type of Request:* Revision of a Currently Approved Collection.
• *Originating Office:* Bureau of Consular Affairs, Office of Visa Services.
• *Form Number:* DS–1648.
• *Respondents:* All applicants for A, G, or NATO visas reauthorizations, excluding A–3, G–5 and NATO–7 applicants.
• *Estimated Number of Respondents:* 30,000.
• *Estimated Number of Responses:* 30,000.
• *Average Hours per Response:* 30 minutes.
• *Total Estimated Burden:* 15,000 hours.
• *Frequency:* Once per application.
• *Obligation to Respond:* Required to obtain benefit.

DATES: The Department will accept comments from the public up to 60 days from May 10, 2010.

ADDRESSES: You may submit comments by any of the following methods:
• *E-mail: VisaRegs@state.gov* (the subject line of the e-mail must be DS–1648).
• *Mail (paper, disk, or CD–ROM submissions):* Chief, Legislation and Regulation Division, Visa Services—DS–1648 Reauthorization, 2401 E Street, NW., Washington, DC 20520–30106.
• *Fax:* (202) 663–3898.

You must include the DS form number, information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Lauren Prosnik of the Office of Visa Services, U.S. Department of State, 2401 E Street, NW., L–603, Washington, DC 20522, who may be reached at (202) 663–2951.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The Department of State uses Form DS–1648 to elicit information from applicants for a renewal of A, G, or NATO visas, exluding A–3, G–5 and NATO–7 applicants. An estimated 30,000 renewal applications are filed each year.

Methodology: The DS–1648 will be submitted electronically to the Department via the internet. The applicant will be instructed to print a confirmation page containing a bar coded record locator, which will be scanned at the time of processing.

Dated: April 19, 2010.

Edward J. Ramotowksi,

Acting Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2010–11006 Filed 5–7–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 6993]

60-Day Notice of Proposed Information Collection: DS–156E, Nonimmigrant Treaty Trader/Investor Application, OMB Control Number 1405–0101

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Nonimmigrant Treaty Trader/Investor Application.
- *OMB Control Number:* 1405–0101.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Department of State (CA/VO)
- *Form Number:* DS–156E.
- *Respondents:* Nonimmigrant treaty trader/investor visa applicants.
- *Estimated Number of Respondents:* 17,000.
- *Estimated Number of Responses:* 17,000.
- *Average Hours per Response:* 4 hours.
- *Total Estimated Burden:* 68,000 hours per year.
- *Frequency:* Once per respondent.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from May 10, 2010.

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

- *E-mail: VisaRegs@state.gov* (Subject line must read DS–156E Reauthorization).
- *Mail (paper, disk, or CD–ROM submissions):* Chief, Legislation and Regulation Division, Visa Services—DS–156E Reauthorization, 2401 E Street, NW., Washington, DC 20520–30106.
- *Fax:* (202) 663–3898.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Emily Cooperman of the Office of Visa Services, U.S. Department of State, 2401 E Street, NW. L–603, Washington, DC 20522, who may be reached at (202) 663–1203.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

Form DS–156E is completed by aliens seeking nonimmigrant treaty trader/investor visas to the US. The Department will use the DS–156E to elicit information necessary to determine an applicant's visa eligibility.

Methodology:

The DS–156E is submitted to consular posts abroad.

Dated: April 19, 2010.

Edward J. Ramotowski,

Deputy Assistant Secretary, Acting Bureau of Consular Affairs, Department of State.

[FR Doc. 2010–11004 Filed 5–7–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 6995]

30-Day Notice of Proposed Information Collection: Forms DS–2053, DS–2054; Medical Examination for Immigrant or Refugee Applicant; DS–3030, Chest X-Ray and Classification Worksheet; OMB Control Number 1405–0113

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Medical Examination for Immigrant or Refugee Applicant.
- *OMB Control Number:* 1405–0113.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Office of Visa Services (CA/VO).
- *Form Number:* DS–2053, DS–2054, DS–3030.
- *Respondents:* Immigrant visa and refugee applicants.
- *Estimated Number of Respondents:* 630,000 per year.
- *Estimated Number of Responses:* 630,000 per year.
- *Average Hours per Response:* 1 hour.
- *Total Estimated Burden:* 630,000 hours annually.
- *Frequency:* Once per application.
- *Obligation to Respond:* Required to Obtain Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from May 10, 2010.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. *Attention:* Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Lauren Prosnik of the Office of Visa Services, U.S. Department of State, 2401 E Street, NW, L–603, Washington, DC 20522, who may be reached at (202) 663–2951.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond,

Abstract of proposed collection:

INA Section 221(d) requires that prior to the issuance of an immigrant visa the applicant undergo a physical and mental examination. INA Section 412(b)(4)(B) requires that the United States Government "provide for the identification of refugees who have been determined to have medical conditions affecting the public health and requiring treatment." Form DS–2053, Medical Examination for Immigrant or Refugee Applicant (1991 Technical Instructions); Form DS–2054, Medical Examination for Immigrant or Refugee Applicant (2007 Technical Instructions); and DS–3030, Chest X–Ray and Classification Worksheet (2007 Technical Instructions) are designed to record the results of the medical examination. A panel physician performs the medical examination of the applicant and completes the forms.

Methodology:

The medical forms are sent to the applicant in the applicant's package. The applicant takes the forms to the panel physician to use during the medical examination. The panel physician completes the medical examination and fills out the forms. The forms are then submitted in hard copy to the consular officer for processing.

Dated: April 28, 2010.

David T. Donahue,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2010–11002 Filed 5–7–10; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0070]

Agency Information Collection Activities; Revision of a Currently-Approved Information Collection Request: Transportation of Household Goods; Consumer Protection

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The information collected will be used to help regulate motor carriers transporting household goods for individual shippers.

DATES: We must receive your comments on or before *July 9, 2010.*

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket Number FMCSA–2010–0070 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington DC 20590–0001 between 9 a.m. and 5 p.m., est, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or post card or print the acknowledgement page that appears after submitting them on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** on April 11, 2000 (65 FR 19476). This information is also available at *http://docketsinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. James R. Dubose, Commercial Enforcement Division, Federal Motor Carrier Safety Administration, West Building 6th Floor, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* 215–656–7251; e-mail *james.dubose@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1749, December 9, 1999) (MCSIA) authorized the Secretary of Transportation to regulate household goods carriers engaged in interstate operations for individual shippers. In earlier legislation, Congress abolished the Interstate Commerce Commission and transferred the Commission's jurisdiction over household goods transportation to the U.S. Department of Transportation (DOT) (ICC Termination Act of 1995, Pub. L. 104–88). Prior to FMCSA's establishment, the Secretary delegated this household goods jurisdiction to the Federal Highway Administration, FMCSA's predecessor organization within DOT.

Sections 4202 through 4216 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005) (SAFETEA–LU) amended various provisions of existing law regarding household goods transportation. It specifically addressed: definitions (section 4202); payment of rates (section 4203); registration requirements for household goods motor carriers (section 4204); carrier operations (section 4205); enforcement of regulations (section 4206); liability of carriers under receipts and bills of lading (section 4207); arbitration requirements (section 4208); civil penalties for brokers and unauthorized transportation (section 4209); penalties for holding goods hostage (section 4210); consumer handbook (section 4211); release of broker information (section 4212); working group for Federal-State relations (section 4213); consumer complaint information (section 4214); review of liability of carriers (section 4215); and application of State laws (section 4216). The FMCSA regulations that set forth Federal requirements for movers that provide interstate transportation of household goods are found in 49 CFR part 375, "Transportation of Household Goods; Consumer Protection Regulation."

Title: Transportation of Household Goods; Consumer Protection.

OMB Control Number: 2126–0025.

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

Respondents: Motor carriers and individual shippers of household goods.

Estimated Number of Respondents: 6,000 household goods movers.

Estimated Time per Response: Varies from 5 minutes to display assigned U.S. DOT number in created advertisement to 12.5 minutes to distribute consumer publication.

Expiration Date: October 31, 2010.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 5,556,000 hours [Informational documents provided to prospective shippers 75,400 hours + written cost estimates for prospective shippers 4,620,000 hours + service orders, bills of lading 805,300 hours + in-transit service notifications 22,600 hours + complaint and inquiry records, including establishing records system 32,700 hours = 5,556,000].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected

information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: April 23, 2010.

Terry Shelton,

Associate Administrator for Research and Information Technology.

[FR Doc. 2010–10940 Filed 5–7–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Alternative Transportation in Parks and Public Lands Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Paul S. Sarbanes Transit in Parks Program Announcement of Project Selections.

SUMMARY: The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) announces the selection of projects funded with Fiscal Year (FY) 2009 appropriations for the Paul S. Sarbanes Transit in Parks program (formally the Alternative Transportation in Parks and Public Lands (ATPPL)) program, authorized by Section 3021 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users of 2005 (SAFETEA–LU) and codified in 49 U.S.C. 5320. The Paul S. Sarbanes Transit in Parks program funds capital and planning expenses for alternative transportation systems in parks and public lands. Federal land management agencies and State, tribal and local governments acting with the consent of a Federal land management agency are eligible recipients.

FOR FURTHER INFORMATION CONTACT: Project sponsors who are State, local, or tribal entities may contact the appropriate FTA Regional Administrator (*See* the Appendix to this Notice) for grant-specific issues. Project sponsors who are a Federal land management agency or a specific unit of a Federal land management agency should work with the contact listed below at their headquarters office to coordinate the availability of funds to that unit.

- *National Park Service:* Mark H Hartsoe, *Mark_H_Hartsoe@nps.gov;* tel: 202–513–7025, *fax:* 202–371–6675, *mail:* 1849 C Street, NW., (MS2420); Washington, DC 20240–0001.
- *Fish and Wildlife Service:* Nathan Caldwell, *Nathan_Caldwell@fws.gov,* tel: 703–358–2205, *fax:* 703–358–2517, *mail:* 4401 N. Fairfax Drive, Room 634; Arlington, VA 22203.
- *Forest Service:* Floyd Thompson, *Fthompson02@fs.fed.us,* tel: 202–205–1423, *mail:* 1400 Independence Avenue, SW.; Washington, DC 20250–1101.
- *Bureau of Land Management:* Victor F. Montoya, *Victor_Montoya@blm.gov,* tel: 202–912–7041, *mail:* 1620 L Street, WO–854, Washington, DC 20036.

For general information about the Paul S. Sarbanes Transit in Parks program, please contact Kimberly Sledge, Office of Program Management, Federal Transit Administration, at *kimberly.sledge@dot.gov*, 202–366–2053.

SUPPLEMENTARY INFORMATION:

A total of $26,900,000 was appropriated for FTA's Paul S. Sarbanes Transit in Parks program in Fiscal Year (FY) 2009. Of this amount, a minimum of $24,801,473 is available for project awards; $134,500 is reserved for oversight activities; $1,500,000 is reserved for planning, research, and technical assistance; and $464,027 will be added to available FY 2010 appropriations for the program. A total of 80 applicants requested $69.0 million, more than twice the amount available in FY 2009 for projects, indicating high competition for funds. Both the U.S. Department of Interior and DOT review committees evaluated the project proposals based on the criteria defined in 49 U.S.C. 5320(g)(2). Final selections were made through a collaborative process.

The goals of the program are to conserve natural, historical, and cultural resources; reduce congestion and pollution; improve visitor mobility and accessibility; enhance visitor experience; and ensure access to all, including persons with disabilities through alternative transportation projects. The projects selected to use FY 2009 funding represent a diverse set of capital and planning projects across the country, ranging from bus purchases to installation of Intelligent Transportation Systems (ITS) and are listed in Table 1.

Applying For Funds

Recipients who are State or local government entities will be required to apply for Paul S. Sarbanes Transit in Parks program funds electronically through FTA's electronic grant award and management system, TEAM. These entities are assigned discretionary project IDs as shown in Table 1 of this notice. The content of these grant applications must reflect the approved proposal. (**Note:** Applications for the Paul S. Sarbanes Transit in Parks program do not require Department of Labor Certification.) Upon grant award, payments to grantees will be made by electronic transfer to the grantee's financial institution through FTA's Electronic Clearing House Operation (ECHO) system. Staff in FTA's Regional offices are available to assist applicants.

Recipients who are Federal land management agencies will be required to enter into an interagency agreement with FTA. FTA will administer one interagency agreement with each Federal land management agency receiving funding through the program for all of that agency's projects. Individual units of Federal land management agencies should work with the contact at their headquarters office listed above to coordinate the availability of funds to that unit.

Program Requirements

Section 5320 requires funding recipients to meet certain requirements. Requirements that reflect existing statutory and regulatory provisions can be found in the document "Alternative Transportation in Parks and Public Lands Program: Requirements for Recipients" available at *http://www.fta.dot.gov/atppl.* These requirements are incorporated into the grant agreements and inter-agency agreements used to fund the selected projects.

Pre-Award Authority

Pre-award authority allows an agency that will receive a grant or interagency agreement to incur certain project costs prior to receipt of the grant or interagency agreement and retain eligibility of the costs for subsequent reimbursement after the grant or agreement is approved. The recipient assumes all risk and is responsible for ensuring that all conditions are met to retain eligibility, including compliance with Federal requirements such as the National Environmental Policy Act (NEPA), SAFETEA–LU planning requirements, and provisions established in the grant contract or Interagency Agreement. This automatic pre-award spending authority, when triggered, permits a grantee to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects. Under the authority provided in 49 U.S.C. 5320(h), FTA is extending pre-award authority for FY 2009 ATTPL projects effective April 5, 2010 when the projects were publicly announced.

The conditions under which pre-award authority may be utilized are specified below:

a. Pre-award authority is not a legal or implied commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds for those projects. Furthermore, it is not a legal or implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).

b. All FTA statutory, procedural, and contractual requirements must be met.

c. No action will be taken by the grantee that prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.

d. Local funds expended pursuant to this pre-award authority will be eligible for reimbursement if FTA later makes a grant or interagency agreement for the project(s). Local funds expended by the grantee prior to the April 5, 2010 public announcement will not be eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds on activities such as land acquisition, demolition, or construction, prior to the completion of the NEPA process, would compromise FTA's ability to comply with Federal environmental laws and may render the project ineligible for FTA funding.

e. When a grant for the project is subsequently awarded, the Financial Status Report in TEAM–Web must indicate the use of pre-award authority, and the pre-award item in the project information section of TEAM should be marked "yes."

Reporting Requirements

All recipients must submit quarterly reports to FTA containing the following information:

(1) Narrative description of project(s); and,

(2) discussion of all budget and schedule changes.

The headquarters office for each Federal land management agency should collect a quarterly report for each of the projects delineated in the interagency agreement and then send these reports (preferably by e-mail) to Kimberly Sledge, FTA, *kimberly.sledge@dot.gov;* 1200 New Jersey Avenue, Washington, DC 20590. Examples can be found on the program Web site at *http://www.fta.dot.gov/atppl*. State and local governments will send this information to FTA for projects that are funded through grants to State and local governments rather than through the interagency agreement. The quarterly reports are due to FTA on the dates noted below:

Quarter	Covering	Due date
1st Quarter Report	October 1–December 31	January 31
2nd Quarter Report	January 1–March 31	April 30
3rd Quarter Report	April 1–June 30	July 31
4th Quarter Report	July 1–September 31	October 31

In order to allow FTA to compute aggregate program performance measures FTA requests that all recipients of funding for capital projects under the Paul S. Sarbanes Transit in Parks program submit the following information annually:

- Annual visitation to the land unit;
- Annual number of persons who use the alternative transportation system (ridership/usage);
- An estimate of the number of vehicle trips mitigated based on alternative transportation system usage and the typical number of passengers per vehicle;
- Cost per passenger; and,
- A note of any special services offered for those systems with higher costs per passenger but more amenities.

State and local government entities should submit this information as part of their fourth quarter report through FTA's TEAM grants management system.

Federal land management agencies should also send this information as part of their fourth quarter report (preferably by e-mail), to Kimberly Sledge, FTA, *kimberly.sledge@dot.gov;* 1200 New Jersey Avenue, SE., E46–303, Washington, DC 20590. Examples can be found on the program Web site at *http://www.fta.dot.gov/atppl.*

Oversight

Recipients of FY 2009 Paul S. Sarbanes Transit in Parks program funds will be required to certify that they will comply with all applicable Federal and FTA programmatic requirements. FTA direct grantees will complete this certification as part of the annual Certification and Assurances package, and Federal Land Management Agency recipients will complete the certification by signing the interagency agreement. This certification is the basis for oversight reviews conducted by FTA.

The Secretary of Transportation and FTA have elected not to apply the triennial review requirements of 49 U.S.C. 5307(h)(2) to Paul S. Sarbanes Transit in Parks program recipients that are other Federal agencies. Instead, working with the existing oversight systems at the Federal Land Management Agencies, FTA will perform periodic reviews of specific projects funded by the Paul S. Sarbanes Transit in Parks program. These reviews will ensure that projects meet the basic statutory, administrative, and regulatory requirements as stipulated by this notice and the certification. To the extent possible, these reviews will be coordinated with other reviews of the project. FTA direct grantees of Paul S. Sarbanes Transit in Parks program funds (State, local and tribal government entities) will be subject to all applicable triennial, State management, civil rights, and other reviews.

Issued in Washington, DC, this 4 day of May 2010.

Peter Rogoff,

Administrator.

Appendix

FTA Regional and Metropolitan Offices

Richard H. Doyle, Regional Administrator, Region 1–Boston, Kendall Square, 55 Broadway, Suite 920, Cambridge, MA 02142–1093, Tel. 617–494–2055.

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Brigid Hynes-Cherin, Regional Administrator, Region 2–New York, One Bowling Green, Room 429, New York, NY 10004–1415, Tel. 212–668–2170.

States served: New Jersey, New York

New York Metropolitan Office, Region 2–New York, One Bowling Green, Room 428, New York, NY 10004–1415, Tel. 212–668–2202.

Letitia Thompson, Regional Administrator, Region 3–Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7100.

States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.

Philadelphia Metropolitan Office, Region 3–Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103–4124, Tel. 215–656–7070.

Washington, DC Metropolitan Office, 1990 K Street, NW., Room 510, Washington, DC 20006, Tel. 202–219–3562.

Yvette Taylor, Regional Administrator, Region 4–Atlanta, 230 Peachtree Street, NW., Suite 800, Atlanta, GA 30303, Tel. 404–865–5600.

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands.

Marisol Simon, Regional Administrator, Region 5–Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Chicago Metropolitan Office, Region 5–Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312–353–2789.

Robert C. Patrick, Regional Administrator, Region 6–Ft. Worth, 819 Taylor Street, Room 8A36, Ft. Worth, TX 76102, Tel. 817–978–0550.

States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.

Mokhtee Ahmad, Regional Administrator, Region 7–Kansas City, MO, 901 Locust Street, Room 404, Kansas City, MO 64106, Tel. 816–329–3920.

States served: Iowa, Kansas, Missouri, and Nebraska.

Terry Rosapep, Regional Administrator, Region 8–Denver, 12300 West Dakota Ave., Suite 310, Lakewood, CO 80228–2583, Tel. 720–963–3300.

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Leslie T. Rogers, Regional Administrator, Region 9–San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105–1926, Tel. 415–744–3133.

States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands.

Los Angeles Metropolitan Office, Region 9–Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017–1850, Tel. 213–202–3952.

Rick Krochalis, Regional Administrator, Region 10–Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174–1002, Tel. 206–220–7954.

States served: Alaska, Idaho, Oregon, and Washington.

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TABLE I

Paul S. Sarbanes Transit in Parks Program

FY 2009 Project Selections

State	Agency	Land Unit	Funding Recipient	Earmark ID	Project Name	Allocation
AK	National Park Service	Sitka National Historic Park	Sitka National Historical Park		Pedestrian/Vehicle Traffic Improvements Study	$80,000
AK	National Park Service	Denali National Park and Preserve	Denali National Park and Preserve		Denali Hybrid Bus Project	435,000
AZ	National Park Service	Grand Canyon National Park	Grand Canyon National Park		Bus Shelters and Amenities at Tusayan Bus stop	495,000
CA	National Park Service	Yurok Reservation/Redwood National Park	Yurok Tribe	D2009-ATPL-001	Park Transit Planning Study	120,000
CA	National Park Service	Golden Gate National Recreation Area	Golden Gate National Recreation Area		Bus Stops and Multi-Use Path to Transit at Muir Beach	460,000
CA	National Park Service	Golden Gate National Recreation Area	Golden Gate National Recreation Area		Pilot Marin Headlands Shuttle	405,000
CA	National Park Service	Golden Gate National Recreation Area	Golden Gate National Recreation Area		Bus Stop Amenities in Marin Headlands and Fort Baker	145,000
CA	National Park Service	Point Reyes National Seashore	Point Reyes National Seashore		Point Reyes Headlands Shuttle Lease Buses	47,000
CA	National Park Service	Point Reyes National Seashore	Point Reyes National Seashore		Stops, Wayfinding and Shelters	296,400
CA	National Park Service	Yosemite National Park	YARTS	D2009-ATPL-002	Purchase Three Clean Diesel Buses for YARTS	1,605,000
CA	National Park Service	Yosemite National Park	Yosemite National Park		Implement Integrated Parkwide Traffic Management System	1,280,000
CA	Forest Service	Inyo Devils Postpile Monument	Eastern Sierra Transit Authority (ESTA)	D2009-ATPL-003	Purchase Buses for Transit in Red Meadow and Devils Postpile	1,600,000
CO	Forest Service	Arapaho-Roosevelt National Forest	Arapaho-Roosevelt National Forest		Alt. Transp. Study in Arapaho-Roosevelt National Forest	580,000
FL	National Park Service	Castillo de San Marcos National Monument	City of St. Augustine, FL	D2009-ATPL-004	Pedestrian and Transit Study	250,000
FL	National Park Service	Gulf Island National Seashore	National Park Service		Construct Passenger Ferry Dock Facilities at Fort Pickens	2,800,000
FL	Fish and Wildlife Service	Ding Darling National Wildlife Refuge	Lee County Transit	D2009-ATPL-005	"Ding" Darling National Wildlife Refuge Alt. Transp. Planning Study	900,000
FL	National Park Service	Rivers, Trails and Conservation Assistance Program	National Park Service		River of Grass Greenway Feasibility Study	1,000,000
IA	Fish and Wildlife Service	Neal Smith National Wildlife Refuge	Neal Smith National Wildlife Refuge		Complete Plainsman Bicycle/Pedestrian Trail	564,075
MA	National Park Service	Cape Cod National Seashore	Cape Cod Commission		Update 5-Year Cape Cod Public Transportation Plan	200,000
MA	National Park Service	Cape Cod National Seashore	Cape Cod National Seashore		Purchase Passenger Vans and Bicycle Trailers	250,000
MA	National Park Service	Lowell National Historic Park	Lowell National Historic Park		Multi-modal Transportation Infrastructure Improvement	800,000
MA	National Park Service	Lowell National Historic Park	City of Lowell, MA	D2009-ATPL-006	Gallagher Transportation Center ADA Pedestrian Access Improv.	650,000
MA	Fish and Wildlife Service	Parker River National Wildlife Refuge	Parker River National Wildlife Refuge		Alternative Fueled Vehicle Visitor Initiative	122,300
MA	National Park Service	New Bedford Whaling National Historic Park	City of New Bedford Office of Planning	D2009-ATPL-007	Establish Alternative Transportation Shuttle	440,000
MD	National Park Service	Fort McHenry National Monument	City of Baltimore DOT	D2009-ATPL-008	Extension of Baltimore Circulator Service to Fort McHenry	1,164,000
ME	National Park Service	Acadia National Park	Acadia National Park		Design and Construct Improvements at Bus Stops	236,000
ME	National Park Service	Acadia National Park	Acadia National Park		Update Island Explorer Electronic Departure Signs	270,000
MT	Forest Service	Gallatin National Forest	Gallatin National Forest		The Highway 86 Alternative transportation Study	279,925
NC	National Park Service	Guilford Courthouse national Military Park	Guilford Courthouse National Military Park		Planning Study to Evaluate a Pilot Partnership Transit System	100,000
ND	National Park Service	Theodore Roosevelt National Park	Town of Medora, North Dakota	D2009-ATPL-009	Theodore Roosevelt National Park and Town of Medora Transit Feasibility Study	100,000
NV	Forest Service	Humboldt-Toiyabe National Forest	US Forest Service		Lee Canyon Shuttle Bus System	327,030
OH	National Park Service	Cuyahoga Valley National Park	Cuyahoga Valley National Park		Rehab/Replace Railway Bridges #454, #437 and #443	970,000
OK	Fish and Wildlife Service	Wichita Mountains National Wildlife Refuge	Wichita Mountains National Wildlife Refuge		Wichita Mountains Wildlife Refuge Bus/Alternative Transportation Replacement Project	292,000
OR	US Army Corps of Engineers	Dalles Lock and Dam	City of the Dalles	D2009-ATPL-010	The Dalles Alternative Energy Park Shuttle and River Front Multi-use Trail Enhancement	340,000
OR	Forest Service	Deschutes National Forest	Deschutes National Forest		Deschutes National Forest Alternative Transportation Feasibility Study	367,000
OR	National Park Service	Lewis and Clark National Historic Park	Sunset Empire Transportation District	D2009-ATPL-011	Bus Lease	33,000
PA	National Park Service	Valley Forge National Historic Park	Valley Forge National Historical Park		Continuation of Partnership Prototype to test Feasibility of an Alternative Transportation System Shuttle Bus Prior to Capital Improvements	237,000
PA	National Park Service	Valley Forge National Historic Park	Valley Forge National Historical Park		Construction of "Missing Link" for Multi-use Trail	966,741
PA	National Park Service	Delaware Water Gap National Recreation Area	Delaware Water Gap National Recreation Area		Regional Visitor Shuttle Alternative Transportation System Study	350,000
TN	National Park Service	Great Smoky Mountain National Park	Cades Cove Heritage Tours		Purchase Fuel Efficient Vehicles and Build Covered Storage	600,000
UT	Forest Service	Wasatch-Cache National Forest	Utah Transit Authority	D2009-ATPL-012	Purchase Buses and Shelters for Big and Little Cottonwood Canyons	1,978,832
UT	Forest Service	Wasatch-Cache National Forest	Salt Lake County	D2009-ATPL-013	Wasatch Canyon Project For Salt Lake County General Plan Update	150,000
VA	Fish and Wildlife Service	Presquile National Wildlife Refuge	Fish and Wildlife Service		Study Transportation Alternatives	200,000
VA	National Park Service	Colonial National Historical Park	Colonial National Historic Park		Jamestown and Yorktown Pilot Bus Service	104,270
WA	National Park Service	Mount Rainier National Park	Mount Rainier National Park		Park Visitor Shuttle Bus Lease	110,900
WA	Forest Service	Wenatchee National Forest	Wenatchee National Forest		Dock Replacement	100,000
	Total Projects.....46			**Total FY 2009 Allocations.....**		**$24,801,473**

[FR Doc. 2010–10924 Filed 5–7–10; 8:45 am]
BILLING CODE C

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID FMCSA–2010–0082]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 22 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before June 9, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2010–0082 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. **Note:** that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." FMCSA can renew exemptions at the end of each 2-year period. The 22 individuals listed in this notice have each requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Clarke C. Boynton

Mr. Boynton, age 35, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/70. Following an examination in 2009, his ophthalmologist noted, "In my medical opinion, Mr. Clarke Boynton has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Boynton reported that he has driven straight trucks for 14 years, accumulating 350,000 miles. He holds a Class B Commercial Driver's License (CDL) from Massachusetts. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Clare H. Buxton

Mr. Buxton, 63, has had a prosthetic left eye since 1998. The best corrected visual acuity in his right eye is 20/25. Following an examination in 2009, his optometrist noted, "Clare has monocular vision right eye only, but in my opinion, can operate a commercial motor vehicle safely." Mr. Buxton reported that he has driven tractor-trailer combinations for 40 years, accumulating 5.2 million miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Raul Charo

Mr. Charo, 50, has had open angle glaucoma in his right eye since 2006. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/20. Following an examination in 2009, his ophthalmologist noted, "In my professional opinion, Mr. Charo has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Charo reported that he has driven straight trucks for 22 years, accumulating 33,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Lester M. Ellingson, Jr.

Mr. Ellingson, 66, has had choroidal melanoma in his left eye since 2000. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2009, his optometrist noted, "In my opinion, Lester has sufficient vision to operate a commercial vehicle." Mr. Ellingson reported that he has driven straight trucks for 47 years, accumulating 235,000 miles, tractor-trailer combinations for 40 years, accumulating 960,000 miles and buses for 40 years, accumulating 20,000 miles. He holds a Class A CDL from North Dakota. His driving record for the last 3 years shows one crash and one conviction. His driving record for the last 3 years shows no crashes and one conviction for a moving violation, speeding in a CMV. He exceeded the speed limit by 10 mph.

Miguel H. Espinoza

Mr. Espinoza, 34, has had amblyopia in his left eye since 1989. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/150. Following an examination in 2009, his optometrist noted, "He has more than

sufficient vision to perform his driving tasks required to operate a commercial vehicle." Mr. Espinoza reported that he has driven straight trucks for 10 years, accumulating 140,000 miles. He holds a Class C operator's license from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Billy R. Gibbs

Mr. Gibbs, 52, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "In my medical opinion, Mr. Gibbs has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Gibbs reported that he has driven straight trucks for 5 years, accumulating 60,000 miles and tractor-trailer combinations for 20 years, accumulating 700,000. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Clyde J. Harms

Mr. Harms, 59, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/80 and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, "It is my professional opinion that he is very capable of performing the driving tasks required to operate a commercial vehicle." Mr. Harms reported that he has driven straight trucks for 33 years, accumulating 148,500 miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ricky P. Hastings

Mr. Hastings, 55, has had a prosthetic left eye since 1991. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2009, his ophthalmologist noted, "Based on my examination findings, I determine that Mr. Hastings has sufficient vision, in this right eye, to perform the driving tasks required to operate a commercial vehicle." Mr. Hastings reported that he has driven straight trucks for 5 years, accumulating 250,000 miles and tractor-trailer combinations for 10 years, accumulating 650,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Wesley V. Holland

Mr. Holland, 48, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/15 and in his left eye, 20/400. Following an examination in 2010, his optometrist noted, "In my medical opinion, Mr. Holland has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Holland reported that he has driven straight trucks for 16 years, accumulating 736,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William D. Holt

Mr. Holt, 48, has had complete loss of vision in his right eye since childhood. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2009 his optometrist noted, "I certify that Mr. Holt does have sufficient vision to drive a commercial vehicle based on guidelines presented to me prior to the examination." Mr. Holt reported that he has driven straight trucks for 30 years, accumulating 630,000 miles and tractor-trailer combinations for 30 years, accumulating 630,000 miles. He holds a Class A CDL from Arizona. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Azizi A. Jamal

Mr. Jamal, 48, has had amblyopia and glaucoma in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, hand-motion vision. Following an examination in 2010 his ophthalmologist noted, "I do feel, in my medical opinion, that he has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Jamal reported that he has driven straight trucks for 3 years, accumulating 91,800 miles. He holds a Class D operator's license from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William L. Martin

Mr. Martin, 33, has extensive corioretinal scarring in his right eye due to a traumatic injury sustained at age 16. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2009, his ophthalmologist noted, "In my medical opinion William Martin has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Martin reported that he has driven straight trucks for 12 years, accumulating 270,000 miles and tractor-trailer combinations for 12 years, accumulating 270,000 miles. He holds a Class A CDL from Oregon. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary G. McKown

Mr. McKown, 60, has had a prosthetic right eye since 1961. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2010, his optometrist noted, "In my opinion, Mr. McKown has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. McKown reported that he has driven straight trucks for 2 years, accumulating 10,000 miles and tractor-trailer combinations for 39 years, accumulating 1.9 million miles. He holds a Class A CDL from West Virginia. His driving record for the last 3 years shows no crashes and one conviction for speeding in a CMV. He exceeded the speed limit by 5 mph.

Larry D. Moss

Mr. Moss, 55, has had complete loss of vision in his right eye since 1962 due to a traumatic injury. The best corrected visual acuity in his left eye is 20/15. Following an examination in 2009 his optometrist noted, "It is my medical opinion that Mr. Larry Moss has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Moss reported that he has driven straight trucks for 8 years, accumulating 768,000 miles. He holds a Class C operator's license from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Leland B. Moss

Mr. Moss, 47, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/20. Following an examination in 2009 his optometrist noted, "I believe his vision is sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. Moss reported that he has driven straight trucks for 10 years, accumulating 200,000 miles. He holds a Class D operator's license from Vermont. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael J. Rankin

Mr. Rankin, 54, has had loss of vision in his right eye since 1989 due to

presumed ocular histoplasmosis. The best corrected visual acuity in his right eye is 20/300 and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, "It is my opinion that he has sufficient vision to safely operate a commercial vehicle across interstate borders." Mr. Rankin reported that he has driven straight trucks for 4 years, accumulating 60,000 miles, and tractor-trailer combinations for 3 years, accumulating 37,500 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jacob H. Riggle

Mr. Riggle, 48, has had macular scarring in his right eye since 1999. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, "In my opinion, Mr. Riggle shows to have sufficient vision to perform the driving tasks required for a commercial driver license." Mr. Riggle reported that he has driven straight trucks for 28 years, accumulating 2.3 million miles, and tractor-trailer combinations for 28 years, accumulating 2.5 million miles. He holds a Class A CDL from Oklahoma. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Terry L. Rubendall

Mr. Rubendall, 54, has had complete loss of vision in his left eye since childhood due to a congenital left orbital tumor. The best corrected visual acuity in his right eye is 20/15. Following an examination in 2009, his optometrist noted, "It is my professional opinion that Terry has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Rubendall reported that he has driven straight trucks for 29 years, accumulating 1.4 million miles, tractor-trailer combinations for 15 years, accumulating 75,000 miles, and buses for 5 years, accumulating 5,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael L. Skeens

Mr. Skeens, 39, has had a prosthetic left eye since childhood. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2010, his ophthalmologist noted, "I, Dr. Jeffrey Bunning, certify in my medical opinion that Mr. Skeens has sufficient vision to perform all driving tasks required to operate a commercial vehicle." Mr. Skeens reported that he has driven straight trucks for 13 years, accumulating 416,000 miles, and tractor-trailer combinations for 3½; years, accumulating 35,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Lee F. Taylor

Mr. Taylor, 54, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/70. Following an examination in 2009, his ophthalmologist noted, "In my medical opinion, Lee Taylor has sufficient vision to perform the required tasks to operate a commercial vehicle." Mr. Taylor reported that he has driven straight trucks for 19 years, accumulating 855,000 miles, and tractor-trailer combinations for 19 years, accumulating 1 million miles. He holds a Class A CDL from New Jersey. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV. He failed to obey a traffic control device.

Aaron E. Wright

Mr. Wright, 42, has had amblyopia and optic nerve damage in his right eye since 1994. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "Mr. Wright has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Wright reported that he has driven straight trucks for 2 years, accumulating 16,000 miles, and tractor-trailer combinations for 3 years, accumulating 315,000 miles. He holds a Class A CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael A. Zingarella, Sr.

Mr. Zingarella, 39, has had amblyopia and strabismus in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, count-finger vision. Following an examination in 2010, his optometrist noted, "It is my medical opinion that Mr. Zingarella has more than sufficient vision to perform the tasks required to operate a commercial vehicle." Mr. Zingarella reported that he has driven straight trucks for 13 years, accumulating 650,000 miles. He holds a Class D operator's license from Connecticut. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV. He failed to use the proper signal while changing lanes.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business June 9, 2010. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: April 23, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–10941 Filed 5–7–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID FMCSA–2010–0083]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemptions from the diabetes mellitus standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 33 individuals for exemptions from the prohibition for persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate commercial motor vehicles in interstate commerce.

DATES: Comments must be received on or before June 9, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2010–0083 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the

on-line instructions for submitting comments.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 33 individuals listed in this notice have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMV in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Spencer W. Alexander

Mr. Alexander, age 28, has had ITDM since 1993. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Alexander meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Utah.

Nelson Alvarez

Mr. Alvarez, 44, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Alvarez meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's license (CDL) from Massachusetts.

Cody R. Anderson

Mr. Anderson, 26, has had ITDM since 1999. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Anderson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Montana.

Ronnie L. Barker

Mr. Barker, 53, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Barker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Georgia.

Eric D. Benham

Mr. Benham, 21, has had ITDM since 2005. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Benham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a chauffeur's license from Indiana.

Brian C. Blevins

Mr. Blevins, 23, has had ITDM since 2005. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Blevins meets the

requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

Charles E. Bonner, Sr.

Mr. Bonner, 62, has had ITDM since 1982. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Bonner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Maryland.

Michael J. Brieske

Mr. Brieske, 50, has had ITDM since 1990. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Brieske meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds an operator's license from Washington.

Frederick Brown

Mr. Brown, 59, has had ITDM since 1998. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Mexico.

William D. Elam, Jr.

Mr. Elam, 37, has had ITDM since 2006. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Elam meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Devin S. Gibson

Mr. Gibson, 49, has had ITDM since 1996. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Gibson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

Lewis M. Hendershott

Mr. Hendershott, 60, has had ITDM since 2004. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Hendershott meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Jersey.

Mark E. Henning

Mr. Henning, 51, has had ITDM since 1990. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Henning meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Duane C. Jackson

Mr. Jackson, 63, has had ITDM since 2000. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Jackson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

John J. Long

Mr. Long, 49, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Long meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

Jerry A. McMurdy

Mr. McMurdy, 70, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. McMurdy meets

the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Steven L. Miller

Mr. Miller, 52, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Miller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

Joe E. Montoya

Mr. Montoya, 73, has had ITDM since 2004. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Montoya meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Mexico.

Jonathan A. Morisoli

Mr. Morisoli, 32, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Morisoli meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from California.

Timothy J. Nowak

Mr. Nowak, 46, has had ITDM since 1996. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Nowak meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Georgia.

Lawrence W. Patterson, Jr.

Mr. Patterson, 57, has had ITDM since 2005. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Patterson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Missouri.

Peter J. Pendola

Mr. Pendola, 36, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Pendola meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

Frederick E. Robinson

Mr. Robinson, 63, has had ITDM since 2002. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Robinson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

Larry D. Schweisberger

Mr. Schweisberger, 57, has had ITDM since 2002. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Schweisberger meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Missouri.

Joseph C. Shaw

Mr. Shaw, 61, has had ITDM since 2010. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Shaw meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Indiana.

Michael Shuler

Mr. Shuler, 39, has had ITDM since 2005. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus

using insulin, and is able to drive a CMV safely. Mr. Shuler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Washington, D.C.

Kevin C. Simerick

Mr. Simerick, 27, has had ITDM since 1988. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Simerick meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2010 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Michigan.

Matthew E. Sipel

Mr. Sipel, 37, has had ITDM since 2002. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Sipel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Michael S. Tanko

Mr. Tanko, 53, has had ITDM since 2007. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Tanko meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class R operator's license from Colorado, which allows him to operate any motor vehicle with a gross weight of less than 26,001 pounds.

James P. Tomasik

Mr. Tomasik, 23, has had ITDM since 2006. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Tomasik meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Leonard D. Tournear

Mr. Tournear, 53, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Tournear meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

Booker T. Ware

Mr. Ware, 60, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Ware meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2010 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Mississippi.

Joseph H. Watkins

Mr. Watkins, 57, has had ITDM since 2009. His endocrinologist examined him in 2010 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes mellitus using insulin, and is able to drive a CMV safely. Mr. Watkins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

[1] Section 4129(a) refers to the 2003 Notice as a "final rule." However, the 2003 Notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: April 26, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–10942 Filed 5–7–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2010 0050]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CONTINGENCY.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0050 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 9, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0050. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov http://smses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel CONTINGENCY is:

Intended Commercial Use of Vessel: "Sailboat offered for limited number of charters."

Geographic Region: "Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Maryland, Florida, Louisiana, U.S. Virgin Islands."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–10904 Filed 5–7–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2010 0045]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GENO IV.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2010–0045 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 9, 2010.

ADDRESSES: Comments should refer to docket number MARAD–2010–0045. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov http://smses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except

Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GENO IV is:

Intended Commercial Use Of Vessel: "6 pack Charterboat."

Geographic Region: "Florida."

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: April 22, 2010.

By Order of the Maritime Administrator.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–10997 Filed 5–7–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

United States Mint

ACTION: Notification of Citizens Coinage Advisory Committee May 25, 2010 Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for May 25, 2010.

Date: May 25, 2010.

Time: 9 a.m. to 12 p.m.

Location: 8th Floor Board Room, United States Mint, 801 9th Street, NW., Washington, DC 20220.

Subject: Review and discuss obverse and reverse candidate designs for the 2011 United States Army Commemorative Coin Program and the obverse and reverse candidate designs for the 2011 Medal of Honor Commemorative Coin Program.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC; 801 9th Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: May 4, 2010.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. 2010–10972 Filed 5–7–10; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on April 19–20, 2010, at the St. Regis Washington DC, 923 16th and K Streets, NW., from 8:30 a.m. to 5 p.m. each day. The meeting will be held in the Chandelier Ballroom. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule and give advice on the most appropriate means of responding to the needs of veterans relating to disability compensation.

On both days, the Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other Veteran benefits programs. Time will be allocated for receiving public comments on the afternoon of April 19. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Ms. Ersie Farber, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (211A), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Farber at (202) 461–9728 or *Ersie.farber@va.gov.*

Dated: March 23, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–10973 Filed 5–7–10; 8:45 am]

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Monday,
May 10, 2010

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 213 and 238

Vehicle/Track Interaction Safety Standards; High-Speed and High Cant Deficiency Operations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 213 and 238

[Docket No. FRA–2009–0036, Notice No. 1]

RIN 2130–AC09

Vehicle/Track Interaction Safety Standards; High-Speed and High Cant Deficiency Operations

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to amend the Track Safety Standards and Passenger Equipment Safety Standards applicable to high-speed and high cant deficiency train operations in order to promote the safe interaction of rail vehicles with the track over which they operate. The proposal would revise existing limits for vehicle response to track perturbations and add new limits as well. The proposal accounts for a range of vehicle types that are currently used and may likely be used on future high-speed or high cant deficiency rail operations, or both. The proposal is based on the results of simulation studies designed to identify track geometry irregularities associated with unsafe wheel/rail forces and accelerations, thorough reviews of vehicle qualification and revenue service test data, and consideration of international practices.

DATES: Written comments must be received by July 9, 2010. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to June 9, 2010, one will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: *Comments:* Comments related to Docket No. FRA–2009–0036, Notice No. 1, may be submitted by any of the following methods:

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

Instructions: Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please *see* the Privacy Act discussion, below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* anytime, or to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: John J. Mardente, Engineer, Office of Railroad Safety, Mail Stop 25, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202–493–1335); Ali Tajaddini, Program Manager for Vehicle/Track Interaction, Office of Railroad Policy and Development, Mail Stop 20, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202–493–6438); or Daniel L. Alpert, Trial Attorney, Office of Chief Counsel, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone 202–493–6026).

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I. Statutory Background

A. Track Safety Standards

The first Federal Track Safety Standards were published on October 20, 1971, following the enactment of the Federal Railroad Safety Act of 1970, Public Law 91–458, 84 Stat. 971 (October 16, 1970), in which Congress granted to FRA comprehensive authority over "all areas of railroad safety." *See* 36 FR 20336. FRA envisioned the new Standards to be an evolving set of safety requirements subject to continuous revision allowing the regulations to keep pace with industry innovations and agency research and development. The most comprehensive revision of the Standards resulted from the Rail Safety Enforcement and Review Act of 1992, Public Law 102–365, 106 Stat. 972 (Sept. 3, 1992), later amended by the Federal Railroad Safety Authorization Act of 1994, Public Law 103–440, 108 Stat. 4615 (November 2, 1994). The amended statute is codified at 49 U.S.C. 20142 and required the Secretary of Transportation (Secretary) to revise the Track Safety Standards, which are contained in 49 CFR part 213. The Secretary delegated the statutory rulemaking responsibilities to the Administrator of the Federal Railroad Administration. *See* 49 CFR 1.49.

B. Passenger Equipment Safety Standards

In September 1994, the Secretary convened a meeting of representatives from all sectors of the rail industry with the goal of enhancing rail safety. As one of the initiatives arising from this Rail Safety Summit, the Secretary announced that DOT would develop safety standards for rail passenger equipment over a 5-year period. In November 1994, Congress adopted the Secretary's schedule for implementing rail passenger equipment safety regulations and included it in the Federal Railroad Safety Authorization Act of 1994. Congress also authorized the Secretary to consult with various organizations involved in passenger train operations for purposes of

prescribing and amending these regulations, as well as issuing orders pursuant to them. Section 215 of this Act is codified at 49 U.S.C. 20133.

II. Proceedings to Date

A. Proceedings To Carry Out the 1992/1994 Track Safety Standards Rulemaking Mandates

To help fulfill the statutory mandates, FRA decided that the proceeding to revise part 213 should advance under the Railroad Safety Advisory Committee (RSAC), which was established on March 11, 1996. (A fuller discussion of RSAC is provided below.) In turn, RSAC formed a Track Working Group, comprised of approximately 30 representatives from railroads, rail labor, trade associations, State government, track equipment manufacturers, and FRA, to develop and draft a proposed rule for revising part 213. The Track Working Group identified issues for discussion from several sources, in addition to the statutory mandates issued by Congress in 1992 and in 1994. Ultimately, the Track Working Group recommended a proposed rule to the full RSAC body, which in turn formally recommended to the Administrator of FRA that FRA issue the proposed rule as it was drafted.

On July 3, 1997, FRA published an NPRM which included substantially the same rule text and preamble developed by the Track Working Group. The NPRM generated comment, and following consideration of the comments received, FRA published a final rule in the **Federal Register** on June 22, 1998, *see* 63 FR 33992, which, effective September 21, 1998, revised the Track Safety Standards in their entirety.

To address the modern railroad operating environment, the final rule included standards specifically applicable to high-speed train operations in a new subpart G. Prior to the 1998 final rule, the Track Safety Standards had addressed six classes of track that permitted passenger and freight trains to travel up to 110 m.p.h.; passenger trains had been allowed to operate at speeds over 110 m.p.h. under conditional waiver granted by FRA. FRA revised the requirements for Class 6 track, included them in new subpart G, and also added three new classes of track in subpart G, track Classes 7 through 9, designating standards for track over which trains may travel at speeds up to 200 m.p.h. The new subpart G was intended to function as a set of "stand alone" regulations governing any track identified as belonging to one of these high-speed track classes.

B. Proceedings To Carry Out the 1994 Passenger Equipment Safety Standards Rulemaking Mandate

FRA formed the Passenger Equipment Safety Standards Working Group to provide FRA with advice in developing the regulations mandated by Congress. On June 17, 1996, FRA published an advance notice of proposed rulemaking (ANPRM) concerning the establishment of comprehensive safety standards for railroad passenger equipment. *See* 61 FR 30672. The ANPRM provided background information on the need for such standards, offered preliminary ideas on approaching passenger safety issues, and presented questions on various passenger safety topics. Following consideration of comments received on the ANPRM and advice from FRA's Passenger Equipment Safety Standards Working Group, FRA published an NPRM on September 23, 1997, to establish comprehensive safety standards for railroad passenger equipment. *See* 62 FR 49728. In addition to requesting written comment on the NPRM, FRA also solicited oral comment at a public hearing held on November 21, 1997. FRA considered the comments received on the NPRM and prepared a final rule, which was published on May 12, 1999. *See* 64 FR 25540.

After publication of the final rule, interested parties filed petitions seeking FRA's reconsideration of certain requirements contained in the rule. These petitions generally related to the following subject areas: structural design; fire safety; training; inspection, testing, and maintenance; and movement of defective equipment. On July 3, 2000, FRA issued a response to the petitions for reconsideration relating to the inspection, testing, and maintenance of passenger equipment, the movement of defective passenger equipment, and other miscellaneous provisions related to mechanical issues contained in the final rule. *See* 65 FR 41284. On April 23, 2002, FRA responded to all remaining issues raised in the petitions for reconsideration, with the exception of those relating to fire safety. *See* 67 FR 19970. Finally, on June 25, 2002, FRA completed its response to the petitions for reconsideration by publishing a response to those petitions concerning the fire safety portion of the rule. *See* 67 FR 42892. (For more detailed information on the petitions for reconsideration and FRA's response to them, please *see* these three rulemaking documents.) The product of this rulemaking was codified primarily at 49 CFR part 238 and secondarily at 49 CFR parts 216, 223, 229, 231, and 232.

C. Identification of Key Issues for Future Rulemaking

While FRA had completed these rulemakings, FRA and interested industry members began identifying various issues for possible future rulemaking. Some of these issues resulted from the gathering of operational experience in applying the new safety standards to Amtrak's high-speed, Acela Express (Acela) trainsets, as well as to higher-speed commuter railroad operations. These included concerns raised by railroads and rail equipment manufacturers as to the application of the new safety standards and the consistency between the requirements contained in part 213 and those in part 238. Other issues arose from the conduct of research, allowing FRA to gather new information with which to evaluate the safety of high-speed and high cant deficiency rail operations. FRA decided to address these issues with the assistance of RSAC.

FRA notes that train operation at cant deficiency involves traveling through a curve faster than the balance speed. Balance speed for any given curve is the speed at which the lateral component of centrifugal force will be exactly compensated (or balanced) by the corresponding component of the gravitational force. When operating above the balance speed, there is a net lateral force to the outside of the curve. Cant deficiency is measured in inches and is the amount of superelevation that would need to be added to the existing track in order to balance this centrifugal force with this gravitational force to realize no net lateral force measured in the plane of the rails. For every curve, there is a balance speed at which the cant deficiency is zero based on the actual superelevation built into the track. In general terms, the higher the train speed through a curve, the higher the cant deficiency.

D. RSAC Overview

As mentioned above, in March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to FRA's Administrator on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major stakeholders, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

- American Association of Private Railroad Car Owners (AAPRCO);

- American Association of State Highway and Transportation Officials (AASHTO);
- American Chemistry Council;
- American Petroleum Institute;
- American Public Transportation Association (APTA);
- American Short Line and Regional Railroad Association;
- American Train Dispatchers Association;
- Association of American Railroads (AAR);
- Association of Railway Museums;
- Association of State Rail Safety Managers (ASRSM);
- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- Brotherhood of Maintenance of Way Employees Division (BMWED);
- Brotherhood of Railroad Signalmen (BRS);
- Chlorine Institute;
- Federal Transit Administration (FTA);*
- Fertilizer Institute;
- High Speed Ground Transportation Association (HSGTA);
- Institute of Makers of Explosives;
- International Association of Machinists and Aerospace Workers;
- International Brotherhood of Electrical Workers (IBEW);
- Labor Council for Latin American Advancement;*
- League of Railway Industry Women;*
- National Association of Railroad Passengers (NARP);
- National Association of Railway Business Women;*
- National Conference of Firemen & Oilers;
- National Railroad Construction and Maintenance Association;
- National Railroad Passenger Corporation (Amtrak);
- National Transportation Safety Board (NTSB);*
- Railway Supply Institute (RSI);
- Safe Travel America (STA);
- Secretaria de Comunicaciones y Transporte;*
- Sheet Metal Workers International Association (SMWIA);
- Tourist Railway Association, Inc.;
- Transport Canada;*
- Transport Workers Union of America (TWU);
- Transportation Communications International Union/BRC (TCIU/BRC);
- Transportation Security Administration;* and
- United Transportation Union (UTU).

*Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The individual task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff members play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or full RSAC body is unable to reach consensus on a recommendation for action, FRA moves ahead to resolve the issue(s) through traditional rulemaking proceedings.

E. Establishment of the Passenger Safety Working Group

On May 20, 2003, FRA presented, and RSAC accepted, the task of reviewing existing passenger equipment safety needs and programs and recommending consideration of specific actions that could be useful in advancing the safety of rail passenger service. The RSAC established the Passenger Safety Working Group (Working Group) to handle this task and develop recommendations for the full RSAC to consider. Members of the Working Group, in addition to FRA, include the following:

- AAR, including members from BNSF Railway Company (BNSF), CSX Transportation, Inc., and Union Pacific Railroad Company;
- AAPRCO;
- AASHTO;
- Amtrak;
- APTA, including members from Bombardier, Inc., Herzog Transit Services, Inc., Interfleet Technology, Inc. (formerly LDK Engineering, Inc.), Long Island Rail Road (LIRR), Maryland Transit Administration (MTA), Metro-North Commuter Railroad Company, Northeast Illinois Regional Commuter Railroad Corporation, Southern California Regional Rail Authority, and Southeastern Pennsylvania Transportation Authority;
- BLET;
- BRS;
- FTA;
- HSGTA;
- IBEW;
- NARP;
- RSI;
- SMWIA;
- STA;
- TCIU/BRC;
- TWU; and
- UTU.

Staff from DOT's John A. Volpe National Transportation Systems Center (Volpe Center) attended all of the meetings and contributed to the technical discussions. Staff from the NTSB also participated in the Working Group's meetings. The Working Group has held 13 meetings on the following dates and in the following locations:

- September 9–10, 2003, in Washington, DC;
- November 6, 2003, in Philadelphia, PA;
- May 11, 2004, in Schaumburg, IL;
- October 26–27, 2004, in Linthicum/Baltimore, MD;
- March 9–10, 2005, in Ft. Lauderdale, FL;
- September 7, 2005, in Chicago, IL;
- March 21–22, 2006, in Ft. Lauderdale, FL;
- September 12–13, 2006, in Orlando, FL;
- April 17–18, 2007, in Orlando, FL;
- December 11, 2007, in Ft. Lauderdale, FL;
- June 18, 2008, in Baltimore, MD;
- November 13, 2008, in Washington, DC; and
- June 8, 2009, in Washington, DC.

F. Establishment of the Task Force

Due to the variety of issues involved, at its November 2003 meeting the Working Group established four task forces—smaller groups to develop recommendations on specific issues within each group's particular area of expertise. Members of the task forces include various representatives from the respective organizations that are part of the larger Working Group. One of these task forces was assigned to identify and develop issues and recommendations specifically related to the inspection, testing, and operation of passenger equipment as well as concerns related to the attachment of safety appliances on passenger equipment. An NPRM on these topics was published on December 8, 2005 (*see* 70 FR 73069), and a final rule was published on October 19, 2006 (*see* 71 FR 61835). Another of these task forces was assigned to develop recommendations related to window

glazing integrity, structural crashworthiness, and the protection of occupants during accidents and incidents. The work of this task force led to the publication of an NPRM focused on enhancing the front end strength of cab cars and multiple-unit (MU) locomotives on August 1, 2007 (*see* 72 FR 42016), and the publication of a final rule on January 8, 2010 (*see* 75 FR 1180). Another task force, the Emergency Preparedness Task Force, was established to identify issues and develop recommendations related to emergency systems, procedures, and equipment. An NPRM on these topics was published on August 24, 2006 (*see* 71 FR 50276), and a final rule was published on February 1, 2008 (*see* 73 FR 6370). The fourth task force, the Track/Vehicle Interaction Task Force (also identified as the Vehicle/Track Interaction Task Force, or Task Force), was established to identify issues and develop recommendations related to the safety of vehicle/track interactions. Initially, the Task Force was charged with considering a number of issues, including vehicle-centered issues involving flange angle, tread conicity, and truck equalization; the necessity for instrumented wheelset tests for operations at speeds from 90 to 125 m.p.h.; consolidation of vehicle trackworthiness criteria in parts 213 and 238; and revisions of track geometry standards. The Task Force was given the responsibility of addressing other vehicle/track interaction safety issues and to recommend any research necessary to facilitate their resolution. Members of the Task Force, in addition to FRA, include the following:

- AAR;
- Amtrak;
- APTA, including members from Bombardier, Interfleet Technology, Inc., LIRR, LTK Engineering Services, Port Authority Trans-Hudson, and STV Inc.;
- BMWED; and
- BRS.

Staff from the Volpe Center attended all of the meetings and contributed to the technical discussions through their comments and presentations. In addition, staff from ENSCO, Inc., attended all of the meetings and contributed to the technical discussions, as a contractor to FRA. Both the Volpe Center and ENSCO, Inc., have supported FRA in the preparation of this NPRM.

The Task Force has held 28 meetings on the following dates and in the following locations:

- April 20–21, 2004, in Washington, DC;
- May 24, 2004, in Springfield, VA (technical subgroup only);
- June 24–25, 2004, in Washington, DC;
- July 6, 2004, in Washington, DC (technical subgroup only);
- July 22, 2004, in Washington, DC (technical subgroup only);
- August 24–25, 2004, in Washington, DC;
- October 12–14, 2004, in Washington, DC;
- December 9, 2004, in Washington, DC;
- February 10, 2005, in Washington, DC;
- April 7, 2005, in Washington, DC;
- August 24, 2005, in Washington, DC;
- November 3–4, 2005, in Washington, DC;
- January 12–13, 2006, in Washington, DC;
- March 7–8, 2006, in Washington, DC;
- April 25, 2006, in Washington, DC;
- May 23, 2006, in Washington, DC;
- July 25–26, 2006, in Cambridge, MA;
- September 7–8, 2006, in Washington, DC;
- November 14–15, 2006, in Washington, DC;
- January 24–25, 2007, in Washington, DC;
- March 29–30, 2007, in Cambridge, MA;
- April 26, 2007, in Springfield, VA;
- May 17–18, 2007, in Cambridge, MA;
- June 25–26, 2007, in Arlington, VA;
- August 8–9, 2007, in Cambridge, MA;
- October 9–11, 2007 in Washington, DC;
- November 19–20, 2007, in Washington, DC; and
- February 27–28, 2008, in Cambridge, MA.

This list includes meetings of a technical subgroup comprised of representatives of the larger Task Force. These subgroup meetings were often convened the day before the larger Task Force meetings to focus on more advanced, technical issues. The results of these meetings were then presented at the larger Task Force meetings and, in turn, included in the minutes of those Task Force meetings.

G. Development of the NPRM

This NPRM was developed to address a number of the concerns raised and issues discussed during the Task Force and Working Group meetings. Minutes of each of these meetings have been made part of the public docket in this proceeding and are available for inspection.

The Task Force recognized that the high-speed track safety standards are based on the principle that, to ensure safety, the interaction of the vehicles and the track over which they operate must be considered within a systems approach that provides for specific limits for vehicle response to track perturbation(s). From the outset, the Task Force strove to develop revisions that would: Serve as practical standards with sound physical and mathematical bases; account for a range of vehicle types that are currently used and may likely be used on future high-speed or high cant deficiency rail operations, or both; and not present an undue burden on railroads. The Task Force first identified key issues requiring attention based on experience applying the current Track Safety Standards and Passenger Equipment Safety Standards, and defined the following work efforts:

- Revise—
  - Qualification requirements for high-speed or high cant deficiency operations, or both;
  - Acceleration and wheel/rail force safety limits;
  - Inspection, monitoring, and maintenance requirements; and
  - Track geometry limits for high-speed operations.
- Establish—
  - Necessary safety limits for wheel profile and truck equalization;
  - Consistent requirements for high cant deficiency operations covering all track classes; and
  - Additional track geometry requirements for cant deficiencies greater than 5 inches.
- Resolve and reconcile inconsistencies between the Track Safety Standards and Passenger Equipment Safety Standards, and between the lower- and higher-speed Track Safety Standards.

Through the close examination of these issues, the Task Force developed proposals intended to result in improved public safety while reducing the burden on the railroad industry where possible. The proposals were arrived at through the results of computer simulations of vehicle/track dynamics, consideration of international practices, and thorough reviews of qualification and revenue service test data.

Nonetheless, FRA makes clear that the Task Force did not seek to revise comprehensively the high-speed Track Safety Standards in subpart G of part 213, and this NPRM does not propose to do so. For example, there was no consensus within the Task Force to consider revisions to the requirements for crossties, as members of the Task Force believed it was outside of their

assigned tasks. Nor was there any real discussion about revisions to the requirements for ballast or other sections in subpart G that currently do not distinguish requirements by class of track. (*See* § 213.307 in the Section-by-Section Analysis, below, for further discussion on this point.) FRA therefore makes clear that by not proposing revisions to these sections in this NPRM, FRA does not mean to imply that these other sections may not be subject to revision in the future. These sections may be addressed through a separate RSAC effort. Further, FRA does invite comment on the need and rationale for changes to other sections of subpart G not specifically proposed to be revised through this NPRM, and based upon the comments received and their significance to the changes specifically proposed herein, FRA may consider whether revisions to additional requirements in subpart G are necessary in the final rule arising from this rulemaking.

Overall, this NPRM is the product of FRA's review, consideration, and acceptance of recommendations made by the Task Force, Working Group, and full RSAC. FRA refers to comments, views, suggestions, or recommendations made by members of the Task Force, Working Group, or full RSAC, as they are identified or contained in the minutes of their meetings. FRA does so to show the origin of certain issues and the nature of discussions concerning those issues at the Task Force, Working Group, and full RSAC level. FRA believes this serves to illuminate factors it has weighed in making its regulatory decisions, as well as the logic behind those decisions. The reader should keep in mind, of course, that only the full RSAC makes recommendations to FRA. As noted above, FRA is in no way bound to follow RSAC's recommendations, and the agency exercises its independent judgment on whether the rule achieves the agency's regulatory goal(s), is soundly supported, and is in accordance with policy and legal requirements. FRA believes that this NPRM is consistent with RSAC's recommendations, with the notable exception of FRA's proposal concerning Class 9 track. Please *see* the discussion of Class 9 track in § 213.307 of the Section-by-Section Analysis, below.

III. Technical Background

A. Lessons Learned and Operational Experience

Since the issuance of both the high-speed Track Safety Standards in 1998 and the Passenger Equipment Safety Standards in 1999, experience has been gained in qualifying a number of vehicles for high-speed and high cant deficiency operations and in monitoring subsequent performance in revenue service operation. These vehicles include Amtrak's Acela Express trainset; MTA's MARC–III multi-level passenger car; and New Jersey Transit Rail Operations' (NJTR) ALP–46 locomotive, Comet V car, PL–42AC locomotive, and multi-level passenger car. Considerable data was gathered by testing these vehicles at speed over their intended service routes using instrumented wheelsets to directly measure forces between the wheel and rail and using accelerometers to record vehicle motions. During the course of these qualification tests, some uncertainties, inconsistencies, and potentially restrictive values were identified in the interpretation and application of the vehicle/track interaction (VTI) safety limits currently specified in § 213.333 and § 213.345 for excessive vehicle motions based on measured accelerations and in the requirements of § 213.57 and § 213.329 for high cant deficiency operation. This information and experience in applying the current requirements are the foundation for a number of the proposals in this NPRM, examples of which are provided below.

Differentiate Between Sustained and Transient Carbody Acceleration Events

During route testing of the MARC–III multi-level car at speeds to 125 m.p.h. and at curving speeds producing up to 5 inches of cant deficiency, several short-duration, peak-to-peak carbody lateral accelerations were recorded that exceeded current thresholds but did not represent unsafe guidance forces simultaneously measured at the wheel-to-rail interface. Yet, sustained, carbody lateral oscillatory accelerations and significant motions were measured on occasion at higher speeds in curves even though peak-to-peak amplitudes did not exceed current thresholds. In addition, a truck component issue was identified and corrected.

To recognize and account for wider variations in vehicle design, the VTI acceleration limits for carbody motions are proposed to be divided into separate limits for passenger cars from those for other vehicles, such as conventional locomotives. In addition, new limits for sustained, carbody oscillatory accelerations are proposed to be added to differentiate between single (transient) events and repeated (sustained) oscillations. As a result, the carbody transient acceleration limits for single events, previously set conservatively to control for both single and repeated oscillations, can be made more specific and relaxed as appropriate. FRA believes that this added specificity in the rule would reduce or eliminate altogether the need for railroads to provide clarification or perform additional analysis, or both, following a qualification test run to distinguish between transient and sustained oscillations. Based on the small energy content associated with high-frequency acceleration events of the carbody, any transient acceleration peaks lasting less than 50 milliseconds are proposed to be excluded from the carbody acceleration limits. Other clarifying changes include the proposed addition of minimum requirements for sampling and filtering of the acceleration data. These changes were proposed after considerable research into the performance of existing vehicles during qualification testing and revenue operations. Overall, it was found that the existing carbody oscillatory acceleration limits need not be as stringent to protect against events leading to vehicle or passenger safety issues.

Establish Consistent Requirements for High Cant Deficiency Operations for All Track Classes

Several issues related to operation at higher cant deficiencies (higher speeds in curves) have also been addressed, based particularly on route testing of the Acela trainsets on Amtrak's Northeast Corridor. In sharper curves, for which cant deficiency was high but vehicle speeds were reflective of a lower track class, it was found that stricter track geometry limits were necessary, for the same track class, in order to provide an equivalent margin of safety for operations at higher cant deficiency. Second, although the current Track Safety Standards prescribe limits on geometry variations existing in isolation, it was recognized that a combination of alinement and surface variations, none of which individually amounts to a deviation from the Standards, may nonetheless result in undesirable response as defined by the VTI limits. This finding is significant because trains operating at high cant deficiency increase the lateral force exerted on track during curving and, in many cases, may correspondingly reduce the margin of safety associated with vehicle response to combined track variations. Qualification of Amtrak's conventional passenger equipment to operate at cant deficiencies up to 5 inches has also highlighted the need to ensure compatibility between the requirements for low- (§ 213.57) and high-speed (§ 213.329) operations.

Streamline Testing Requirements for Similar Vehicles

This NPRM includes a proposal that vehicles with minor variations in their physical properties (such as suspension, mass, interior arrangements, and dimensions) that do not result in significant changes to their dynamic characteristics be considered of the same type for vehicle qualification purposes. If such similarity can be established to FRA's satisfaction, such vehicles would not be required to undergo full qualification testing, which can be more costly. In other cases, however, the variations between car parameters may warrant partial or full dynamic testing. For example, the approval process for NJTR's Comet V car to operate at speeds up to 100 m.p.h. exemplified the need for clarification of whether vehicles similar (but not identical) to vehicles that have undergone full qualification testing should be subjected to full qualification testing themselves. NJTR had sought relief from the instrumented wheelset testing required in § 213.345 by stating that the Comet V car was similar to the Comet IV car. The Comet V car was represented to FRA to have truck and suspension components nearly identical to the Comet IV car already in service and operating at 100-m.p.h. speeds for many years. However, examination by FRA revealed enough differences between the vehicles to at least warrant dynamic testing using accelerometers on representative routes. Results of the testing showed distinct behaviors between the cars and provided additional data that was necessary for qualifying the Comet V.

Refine Criteria for Detecting Truck Hunting

During route testing of Acela trainsets, high-frequency lateral acceleration oscillations of the coach truck frame were detected by the test instrumentation in a mild curve at high speed. However, the onboard sensors, installed per specification on every truck, did not respond to these events. Based on these experiences, the truck lateral acceleration limit, used for the detection of truck hunting, is proposed to be tightened from 0.4g to 0.3g and include a requirement that the value must exceed that limit for more than 2 seconds for there to be an exceedance. Analyses conducted by FRA have shown that this would help to better identify the occurrences of excessive truck hunting, while excluding high-frequency, low-amplitude oscillations that would not require immediate attention. In addition, to improve the process for analyzing data while the vehicle is negotiating spiral track segments, the limit would now require that the RMSt (root mean squared with linear trend removed) value be used rather than the RMSm (root mean squared with mean removed) value.

Finally, placement of the truck frame lateral accelerometer to detect truck hunting would be more rigorously specified to be as near an axle as is practicable. Analyses conducted by FRA have shown that when hunting motion (which is typically a combination of truck lateral and yaw) has a large truck yaw component, hunting is best detected by placing an accelerometer on the truck frame located above an axle. An accelerometer placed in the middle of the truck frame will not always provide early detection of truck hunting when yaw motion of the truck is large.

Revise Periodic Monitoring Requirements for Class 8 and 9 Track

Based on data collected to date, and so that the required inspection frequency better reflects experienced degradation rates, the periodic vehicle/track interaction monitoring frequency contained in § 213.333 for operations at track Class 8 and 9 speeds is proposed to be reduced from once per day to four times per week for carbody accelerations, and twice within 60 days for truck accelerations. In addition, a clause is proposed to be added to allow the track owner or railroad operating the vehicle type to petition FRA, after a specified amount of time or mileage, to eliminate the truck accelerometer monitoring requirement. Data gathered has shown that these monitoring requirements may be adjusted without materially diminishing operational safety. Nonetheless, FRA notes that in addition to these requirements, pursuant to § 238.427, truck acceleration would continue to be constantly monitored on each Tier II vehicle under the Passenger Equipment Safety Standards in order to determine if hunting oscillations of the vehicle are occurring during revenue operation.

B. Research and Computer Modeling

As a result of advancements made over the last few decades, computer models of rail vehicles interacting with track have become practical and reliable tools for predicting the behavior and safety of rail vehicles under specified conditions. These models can serve as reliable substitutes for performing actual, on-track testing, which otherwise may be more difficult—and likely more costly—to perform than to model.

Models for such behavior typically represent the vehicle body, wheelsets, truck frames, and other major vehicle components as rigid bodies connected with elastic and damping elements and include detailed representation of the non-linear wheel/rail contact mechanics (*i.e.,* non-linear frictional contact forces between the wheels and rails modeled as functions of the relative velocities between the wheel and rail contacts, *i.e.,* creepages). The primary dynamic input to these models is track irregularities, which can be created analytically (such as versines, cusps, *etc.*) or based on actual measurements.

There are a number of industry codes available with generally-accepted approaches for solving the equations of motion describing the dynamic behavior of rail vehicles. These models require accurate knowledge of vehicle parameters, including the inertia properties of each of the bodies as well as the characteristics of the main suspension components and connections. To obtain reliable predictions, the models must also consider the effects of parameter non-linearities within the vehicles and in the wheel/rail contact mechanics, as well as incorporate detailed characterization of the track as input including the range of parameters and non-linearities encountered in service.

In order to develop the proposed revisions to track geometry limits in the Track Safety Standards, several computer models of rail vehicles have been used to assess the response of vehicle designs to a wide range of track conditions corresponding to limiting conditions allowed for each class of track. Simulation studies have been performed using computer models of Amtrak's AEM–7 locomotive, Acela power car, Acela coach car, and Amfleet coach equipment. Since the 1998 revisions to the track geometry limits, which were based on models of hypothetical, high-speed vehicles, models of the subsequently-introduced Acela power car and coach car have been developed. In the case of the Acela power car, the model proved capable of reproducing a wide range of vehicle responses observed during acceptance testing, including examples of potential safety concerns.

For purposes of this NPRM, an extensive matrix of simulation studies involving all four vehicle types was used to determine the amplitude of track geometry alinement anomalies, surface anomalies, and combined surface and alinement anomalies that result in undesirable response as defined by the proposed revision to the VTI limits. These simulations were performed using two coefficients of friction (0.1 and 0.5), two analytical

anomaly shapes (bump and ramp), and combinations of speed, curvature, and superelevation to cover a range of cant deficiency. The results provided the basis for establishing the refinements to the geometry limits proposed in this NPRM. For illustration purposes, two examples of results from the simulation studies that were performed for determining safe amplitudes of track geometry are being provided in this document: one illustrates the effect of combined geometry defects; the other illustrates isolated alinement geometry defects.

Figure 1 depicts an example summarizing the results of the Acela power car at 130 m.p.h. and 9 inches of cant deficiency over combined 124-foot wavelength defects. The darker-shaded squares represent a combination of alinement and surface perturbations where at least one of the proposed VTI safety criteria is exceeded, and the solid, black-lined polygon represents the proposed track geometry limits. Similar results for other cars, speeds and cant deficiencies, and defect wavelengths were created and reviewed. As shown, without the addition of the combined defect limit in the upper right and lower left corners (which has the effect of limiting geometry in the up-and-in and down-and-out corners), the single-defect limits would permit track geometry conditions that could cause the proposed VTI safety criteria to be exceeded. For many of these high-speed and high cant deficiency conditions, the net axle lateral force safety criterion was found to be the limiting safety condition.

Figure 2 depicts an example result for the single-defect simulations, summarizing the response of the Acela power car at 130 m.p.h. and 9 inches of cant deficiency over isolated alinement defects. Each vertical bar represents the amplitude of the largest alinement perturbation that will not cause an exceedance of one of the proposed VTI safety criteria. Similar results for other cars, speeds and cant deficiencies, and defect wavelength were created and reviewed. In addition, similar results for this range of analysis parameters (cars, speeds and cant deficiencies, and defect wavelength) were created and reviewed using isolated, surface geometry defects. These example results show that, with one exception, current limits sufficiently protect against such exceedances under the modeled conditions. The proposed VTI limit for net axle lateral force was not found to be met under the existing 124-foot mid-chord offset (MCO) geometry limit for track alinement, which the modeling showed to be set too permissively. Consequently, FRA is proposing to tighten this geometry limit to prevent unsafe vehicle dynamic response.

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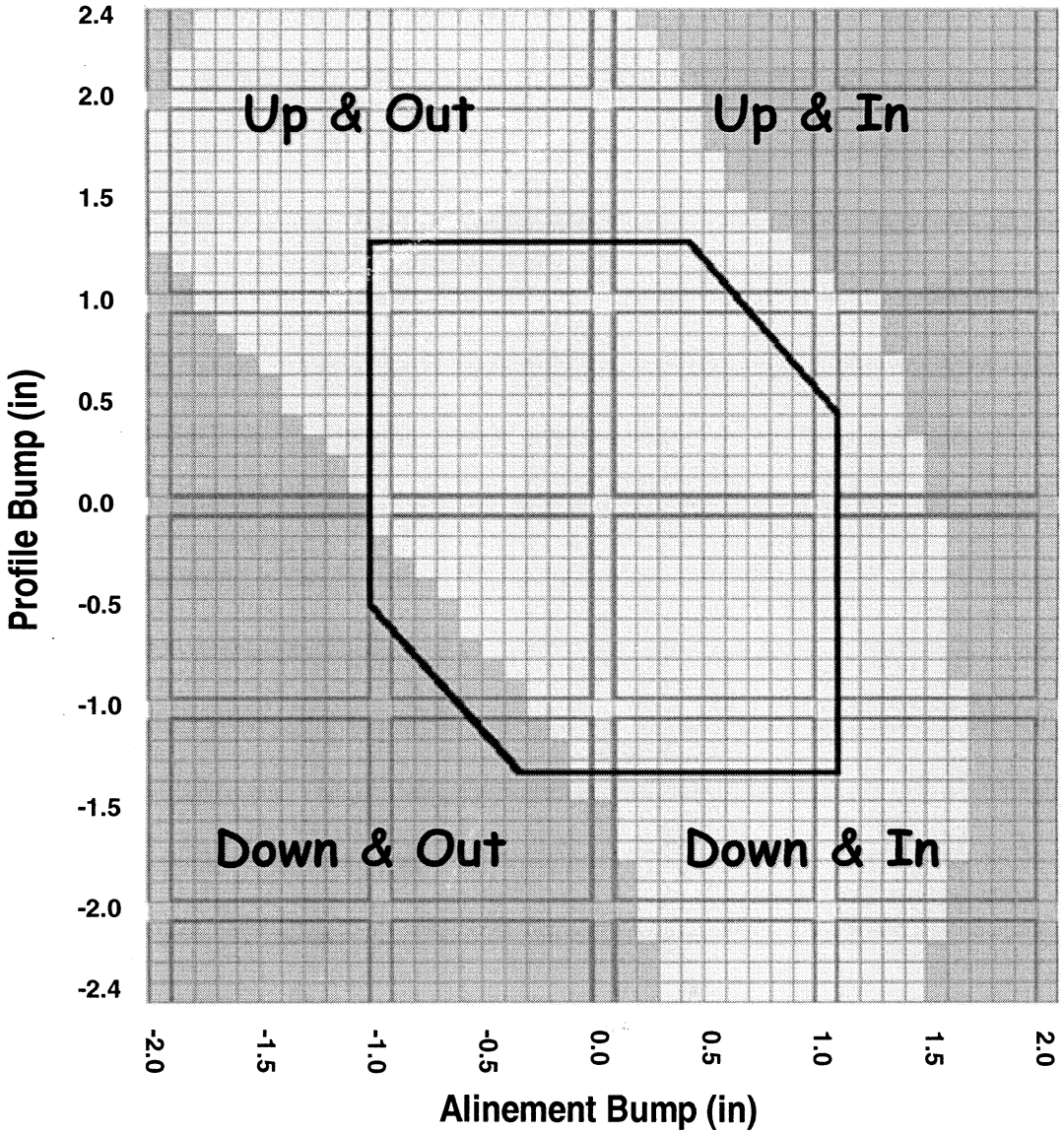

Figure 1. Combined Alinement and Profile (Surface) Deviations, 124-foot Wavelength, Acela Power Car, 130 m.p.h., 9 inches (in) of Cant Deficiency

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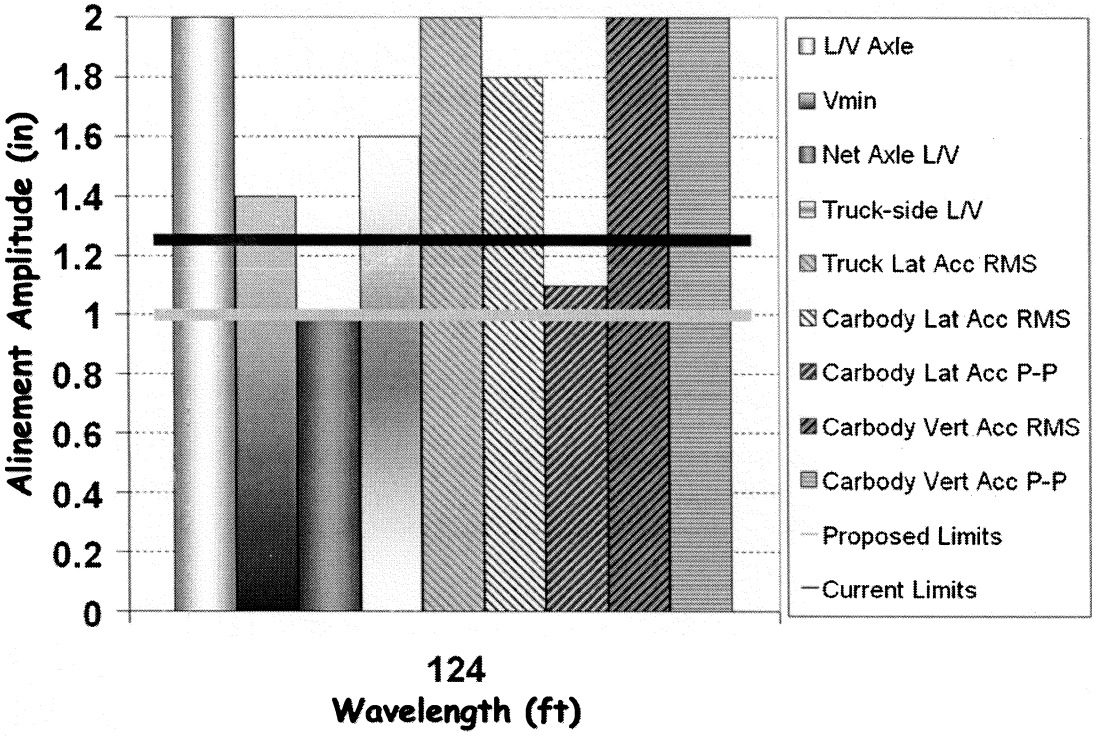

Figure 2. Isolated Alinement Deviations, 124-foot Wavelength, Acela Power Car, 130 m.p.h., 9 inches of Cant Deficiency

As part of this proposed rule, and as discussed further in the Section-by-Section Analysis, simulations using computer models would be required during the vehicle qualification process as an important tool for the assessment of vehicle performance. These simulations are intended not only to augment on-track, instrumented performance assessments but also to provide a means for identifying vehicle dynamic performance issues prior to service to validate suitability of a vehicle design for operation over its intended route. In order to evaluate safety performance as part of the vehicle qualification process, simulations would be conducted using both a measured track geometry segment representative of the full route, and an analytically-defined track segment containing geometry perturbations representative of minimally compliant track conditions for the respective class. This Minimally Compliant Analytical Track (or MCAT) would be used to qualify both new vehicles for operation and vehicles previously qualified (on other routes) for operation over new routes. MCAT consists of nine sections; each section is designed to test a vehicle's performance in response to a specific type of perturbation (hunting perturbation, gage narrowing, gage widening, repeated and single surface perturbations, repeated and single alinement perturbations, short warp, and combined down-and-out perturbations). Typical simulation parameters (that are to be varied) include: speed, cant deficiency, gage, and wheel profile. Figure 3 depicts time traces of the percent of wheel unloading for the Acela coach in a simulated run over MCAT segments that would be required for analyzing high cant deficiency curving performance at 160 m.p.h.

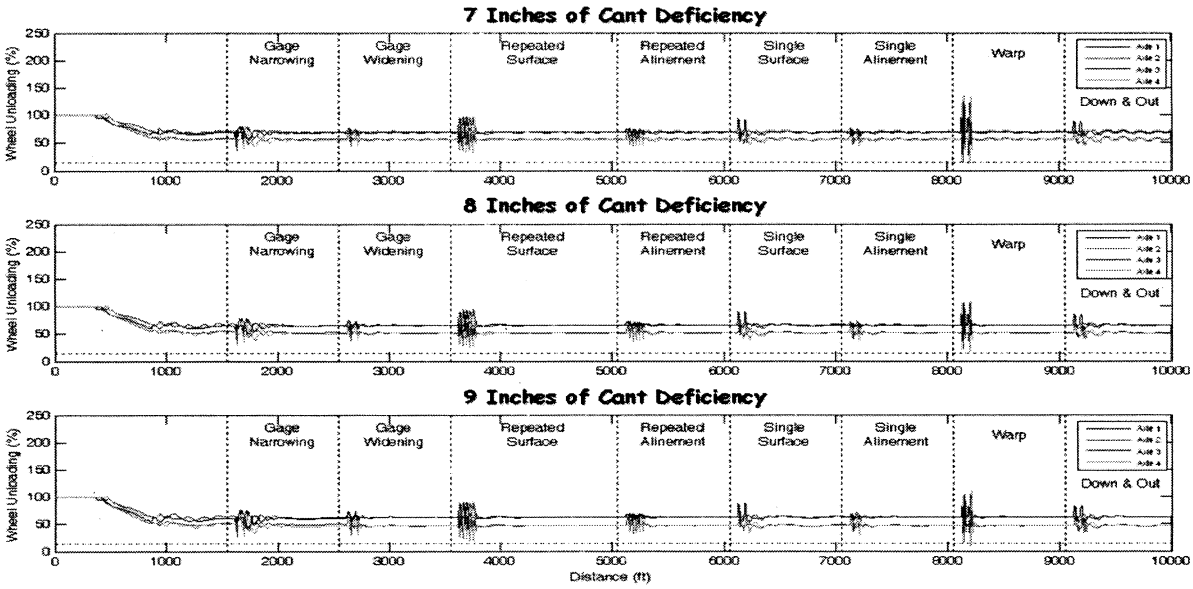

Figure 3. V_{min}, Acela Coach, 160 m.p.h., 31-foot Perturbations

IV. Section-by-Section Analysis

Proposed Amendments to 49 CFR Part 213, Track Safety Standards

Subpart A—General

Section 213.1 Scope of Part

This section was amended in the 1998 Track Safety Standards final rule to distinguish the applicability of subpart G from that of subparts A through F, as a result of subpart G's addition to this part by that final rule. Subpart G applies to track over which trains are operated at speeds exceeding those permitted for Class 5 track, which supports maximum speeds of 80 m.p.h. for freight trains and 90 m.p.h. for passenger trains. Subpart G was intended to be comprehensive, so that a railroad operating at speeds above Class 5 maximum speeds may refer to subpart G for all of the substantive track safety requirements for high-speed rail and need refer to the sections of the Track Safety Standards applicable to lower-speed operations only for the general provisions at § 213.2 (Preemptive effect), § 213.3 (Application), and § 213.15 (Penalties). At the same time, railroads that do not operate at speeds in excess of the maximum Class 5 speeds need not directly refer to subpart G at all.

FRA seeks to maintain this general structure of part 213 for ease of use, and the requirements of subpart G would continue not to apply directly to operations at Class 1 through 5 track speeds. However, in proposing to add new requirements governing high cant deficiency operations for track Classes 1 through 5, certain sections of subparts C and D would refer railroads operating at high cant deficiencies to specific sections of subpart G. In such circumstances, only the specifically-referenced section(s) of subpart G would apply, and only as provided. As discussed in this Section-by-Section Analysis, below, the proposed addition of requirements for high cant deficiency operations over lower-speed track classes would permit railroads to operate at higher cant deficiencies over these track classes by complying with the terms of the regulation instead of a waiver. Currently, railroads must petition FRA for a waiver and then obtain FRA's approval to operate at high cant deficiencies over lower-speed track classes.

FRA believes that the approach proposed in this rulemaking would minimize the addition of detailed requirements for high cant deficiency operations in subparts C and D. Moreover, FRA does not believe it necessary to amend this section on the scope of this part, because only certain requirements of subpart G would apply to lower-speed track classes and only indirectly through cross-references to those requirements in subpart G for high cant deficiency operations. FRA believes that this approach is consistent with the current organization of this part, as existing § 213.57 already references subpart G for when a track owner or railroad operating above Class 5 track speeds requests approval to operate at greater than 4 inches of cant deficiency on curves in Class 1 through 5 track contiguous to the high-speed track. Nonetheless, FRA invites both comment on this proposed approach and suggestions for any alternative approach for maintaining the ease of use of this part. In this regard, FRA invites comment on whether the subpart headings should be modified to make their application clearer to the rail operations they address, and, if so, in what way(s).

As a separate matter, FRA notes that it is not proposing to revise and re-issue the Track Safety Standards in full, as was done in the 1998 final rule. Instead, FRA is proposing to amend only certain portions of the Track Safety Standards. Therefore, the final rule arising from this rulemaking will need to ensure that both the new and revised sections appropriately integrate with those sections of this part that are not amended, and that appropriate time is provided to phase-in the new and amended sections. In general, the Task Force recommended that both new and revised sections become applicable one year after the date the final rule is published. This phase-in period is intended to allow the track owner or operating railroad, or both, sufficient time to prepare for and adjust to meeting the new requirements. Examples of such adjustments may include changes to operating, inspection, or maintenance practices, such as for compliance with §§ 213.57, 213.329, 213.332, 213.333 and 213.345, as they would be revised.

FRA is also considering providing the track owner or operating railroad the

option of electing to comply sooner with the new and amended requirements, upon written notification to FRA. Such a request for earlier application of the new and amended requirements would indicate the track owner's or railroad's readiness and ability to comply with all of the new and amended requirements—not just certain of those requirements. Because of the interrelationship of the proposed changes, FRA believes that virtually all of the changes would need to apply at the same time to maintain their integrity. FRA invites comment on formalizing this approach for the final rule. FRA does note that since it intends for the final rule to become effective 60 days after its publication, and since there cannot be two different sections of the same CFR unit under the same section heading, FRA may need to move current sections of part 213 that would be revised to a temporary appendix to allow for continued compliance with those sections for a track owner or railroad electing not to comply sooner with the revised sections of part 213. Use of such an appendix would be consistent with FRA practice.

Section 213.7 Designation of Qualified Persons To Supervise Certain Renewals and Inspect Track

This section recognizes that work on or about a track structure supporting heavy freight trains or passenger operations, or both, demands the highest awareness of employees of the need to perform their work properly. At the same time, the current wording of this section literally requires that each individual designated to perform such work know and understand the requirements of this part, detect deviations from those requirements, and prescribe appropriate remedial action to correct or safely compensate for those deviations, regardless whether that knowledge, understanding, and ability with regard to all of this part is necessary for that individual to perform his or her duties. While qualified persons designated under this section have not been directly required to know, understand, and apply the requirements of subpart G (pursuant to § 213.1(b)), the proposed addition of vehicle qualification and testing requirements for high cant deficiency operations in these lower-speed track classes would in particular add a level of complexity that may be outside of the purview of track foremen and inspectors in fulfilling their duties.

As a result, the Task Force recommended and FRA agrees that this rulemaking make clear that the requirements for a person to be qualified under this section concern those portions of this part necessary for the performance of that person's duties. FRA is therefore proposing to add to the end of paragraph (a)(2)(i) the words "that apply to the restoration and renewal of track for which he or she is responsible," and to add to the end of paragraph (b)(2)(i) the words "that apply to the inspection of track for which he or she is responsible." This proposal would continue to require that a person designated under this section possess the knowledge, understanding, and ability necessary to supervise the restoration and renewal of track, or to perform inspections of track, or both, for which he or she is responsible. Yet, this proposal would make clear that the person would not be required to know, understand, or apply specific requirements of this part not necessary to the fulfillment of that person's duties. FRA does not believe that safety would be in any way diminished by this proposal. FRA does believe that this clarification is consistent with the intent of the Track Safety Standards.

Subpart C—Track Geometry

Section 213.55 Track Alinement

This section specifies the maximum alinement deviations allowed for tangent and curved track in Classes 1 through 5. Alinement (also spelled "alignment" and literally meant to indicate "a line") is the localized variation in curvature of each rail. On tangent track, the intended curvature is zero, and thus the alinement is measured as the variation or deviation from zero. In a curve, the alinement is measured as the variation or deviation from the "uniform" alinement over a specified distance.

FRA is proposing to modify the section heading so that it reads "Track alinement," instead of "Alinement," to better conform with the format of other sections in the part. The primary change to this section would be the addition of a new paragraph (b) containing tighter, single-deviation geometry limits for operations above 5 inches of cant deficiency on curved track. These limits would include both 31-foot and 62-foot MCO limits. A footnote would be added for track Classes 1 and 2 in paragraph (b), noting that restraining rails or other systems may be required for derailment prevention. The current limits in paragraph (a) would remain unchanged. FRA believes that adding the track geometry limits in paragraph (b) is necessary to provide an equivalent margin of safety for operations at higher cant deficiency. These proposed limits are based on the results of simulation studies, as discussed in section III.B. of the preamble, above, to determine the safe amplitudes of track geometry alinement variations. For higher cant deficiency operations, curved track geometry limits are to be applied only when track curvature is greater than 0.25 degree.

Section 213.57 Curves; Elevation and Speed Limitations

In general, this section specifies the requirements for safe curving speeds in track Classes 1 through 5. FRA is proposing substantial changes to this section, including modification and clarification of the qualification requirements and approval process for vehicles intended to operate at more than 3 inches of cant deficiency. For consistency with the higher speed standards in subpart G, cant deficiency would no longer be limited to a maximum of 4 inches in track Classes 1 through 5. Currently, this section specifies qualification requirements for vehicles intended to operate at up to only 4 inches of cant deficiency on track Classes 1 through 5 unless the track is contiguous to a higher-speed track. Consequently, vehicles intended to operate at more than 4 inches of cant deficiency on routes not contiguous to a higher-speed track currently must file for and obtain a waiver in accordance with part 211 of this chapter. FRA is therefore proposing to establish procedures for such vehicles to operate safely at greater than 4 inches of cant deficiency without the necessity of obtaining a waiver.

Paragraph (a) would be revised in two respects. The first sentence of paragraph (a) currently provides that the maximum crosslevel of the outside rail of a curve may not be more than 8 inches on track Classes 1 and 2, and 7 inches on Classes 3 through 5. This requirement would be restated to provide that the maximum elevation of the outside rail of a curve may not be more than 8 inches on track Classes 1 and 2, and 7 inches on track Classes 3 through 5. Crosslevel is a function of elevation differences between two rails, and is the focus of other provisions of this proposal, specifically § 213.63, Track surface. The proposed clarification here is intended to limit the elevation of a single rail.

The Task force had recommended removing the second sentence, which provides that "[e]xcept as provided in § 213.63, the outside rail of a curve may not be lower than the inside rail." Concern had been raised in the Task Force that this statement potentially conflicts with the limits in § 213.63 for "the deviation from * * * reverse crosslevel elevation on curves." FRA has decided that the second sentence of

paragraph (a) should be re-written more clearly to restrict configuring track so that the outside rail of a curve is designed to be lower than the inside rail, while allowing for a deviation of up to the limits provided in § 213.63. This requirement in paragraph (a) is intended to restrict configuring track so that the outside rail of a curve is, by design, lower than the inside rail; the limits at issue in § 213.63 govern local deviations from uniform elevation—from the designed elevation—that occur as a result of changes in conditions. Rather than conflict, these provisions complement each other, addressing both the designed layout of a curve and deviations from that layout through actual use.

Paragraph (b) has been added to address potential vehicle rollover and passenger safety issues should a vehicle be stopped or traveling at very low speed on superelevated curves. For this cant-excess condition the rule would require that all vehicles requiring qualification under § 213.345 must demonstrate that when stopped on a curve having a maximum uniform elevation of 7 inches, no wheel unloads to a value less than 50 percent of its static weight on level track. This requirement would include an allowance for side-wind loading on the vehicle to prevent complete unloading of the wheels on the high (elevated) rail and incipient rollover.

In paragraph (c), the V_{max} formula sets the maximum allowable operating speed for curved track based on the qualified cant deficiency (inches of unbalance), E_u, for the vehicle type. Clarification would be added in a new footnote 2 to allow the vehicle to operate at the cant deficiency for which it is approved, E_u, plus 1 inch, if actual elevation of the outside rail, E_a, and degree of track curvature, D, change as a result of track degradation. This 1-inch margin would provide a tolerance to account for the effects of local crosslevel or curvature conditions on V_{max} that may result in the operating cant deficiency exceeding that approved for the equipment. Without this tolerance, these conditions could generate a limiting speed exception, and some railroads have adopted the approach of reducing the operating cant deficiency of the vehicle in order to avoid these exceptions.

FRA also notes that it was the consensus of the Task Force to clarify footnote 1 to state, in part, that actual elevation, E_a, for each 155-foot track segment in the body of the curve is determined by averaging the elevation for 11 points through the segment at 15.5-foot spacing—instead of 10 points, as expressly provided in the current footnote. FRA's Track Safety Standards Compliance Manual (Manual) explains that the "actual elevation and curvature to be used in the [V_{max}] formula are determined by averaging the elevation and curvature for 10 points, including the point of concern for a total of 11, through the segment at 15.5-[foot] station spacing." *See* the guidance on § 213.57 provided in Chapter 5 of the Manual, which is available on FRA's Web site at *http://www.fra.dot.gov/downloads/safety/track_compliance_manual/TCM%205.PDF.* This clarification to footnote 1 would make the footnote more consistent with the manner in which the rule is intended to be applied.

Existing footnote 2 would be redesignated as footnote 3 without substantive change.

Paragraph (d) would provide that all vehicle types are considered qualified for up to 3 inches of cant deficiency, as allowed by the current rule.

Paragraph (e) would be modified to specify the requirements for vehicle qualification over track with more than 3 inches of cant deficiency. The existing static lean requirements for 4 inches of cant deficiency limit the carbody roll to 5.7 degrees with respect to the horizontal when the vehicle is standing on track with 4 inches of superelevation, and limit the vertical wheel load remaining on the raised wheels to no less than 60% of their static level values and carbody roll to 8.6 degrees with respect to the horizontal when the vehicle is standing (stationary) on track with 6 inches of superelevation. The proposed requirements would not limit the cant deficiency to 4 inches, and would not impose the 6-inch superelevation static lean requirement specifically for 4-inch cant deficiency qualification. The latter requirement is intended to be addressed in paragraph (b), as discussed above, for all vehicles requiring qualification under § 213.345.

The proposed requirements in paragraph (e) could be met by either static or dynamic testing. The static lean test would limit the vertical wheel load remaining on the raised wheels to no less than 60% of their static level values and the roll of a passenger carbody to 8.6 degrees with respect to the horizontal, when the vehicle is standing on track with superelevation equal to the intended cant deficiency. The dynamic test would limit the steady-state vertical wheel load remaining on the low rail wheels to no less than 60% of their static level values and the lateral acceleration in a passenger car to 0.15g steady-state, when the vehicle operates through a curve at the intended cant deficiency. (Please note that steady-state, carbody lateral acceleration, *i.e.,* the tangential force pulling passengers to one side of the carbody when traveling through a curve at higher than the balance speed, should not be confused with sustained, carbody lateral oscillatory accelerations, *i.e.,* continuous side-to-side oscillations of the carbody in response to track conditions, whether on curved or tangent track.) This 0.15g steady-state lateral acceleration limit in the dynamic test would provide consistency with the 8.6-degree roll limit in the static lean test, in that it corresponds to the lateral acceleration a passenger would experience in a standing vehicle whose carbody is at a roll angle of 8.6 degrees with respect to the horizontal. The 5.7-degree roll limit, which limits steady-state, carbody lateral acceleration to 0.1g, would be eliminated from the existing rule.

Measurements and supplemental research indicate that a steady-state, carbody lateral acceleration limit of 0.15g is considered to be the maximum, steady-state lateral acceleration above which jolts from vehicle dynamic response to track deviations can present a hazard to passenger safety. While other FRA vehicle/track interaction safety criteria principally address external safety hazards that may cause a derailment, such as damage to track structure and other conditions at the wheel/rail interface, the steady-state carbody lateral acceleration limit specifically addresses the safety of the interior occupant environment. For comparison purposes, it is notable that European standards, such as International Union of Railways (UIC) Code 518, Testing and Approval of Railway Vehicles from the Point of View of Their Dynamic Behaviour—Safety—Track Fatigue—Ride Quality, have adopted a steady-state, carbody lateral acceleration limit of 0.15g. FRA does recognize that making a comparison with such a specific limit in another body of standards needs to take into account what related limits are provided in the compared standards and what the nature of the operating environment is to which the compared standards apply. FRA therefore invites comment whether such a comparison is appropriate here—whether, for example, there are enhanced or additional vehicle/track safety limits that apply to European operations, either through industry practice or governing standards, or both.

Increasing the steady-state, carbody lateral acceleration limit from 0.1g to 0.15g would allow for operations at higher cant deficiency on the basis of

acceleration before tilt compensation is necessary. This increase in cant deficiency without requiring tilt compensation would be larger for a vehicle design whose carbody is less disposed to roll on its suspension when subjected to an unbalance force, since carbody roll on curved track has a direct effect on steady-state, carbody lateral acceleration. For example, a vehicle having a completely rigid suspension system (S = 0) would have no carbody roll and could operate without a tilt system at a cant deficiency as high as 9 inches, at which point the steady-state, carbody lateral acceleration would be 0.15g, which would correlate to an 8.6-degree roll angle between the floor and the horizontal when the vehicle is standing on a track with 9 inches of superelevation. The suspension coefficient "S" is the ratio of the roll angle of the carbody on its suspension (measured relative to the inclination of the track) to the cant angle of the track (measured relative to the horizontal) for a stationary vehicle standing on a track with superelevation. A suspension coefficient of 0 is theoretical but neither practical nor desirable, because of the need for flexibility in the suspension system to handle track conditions and provide for occupant comfort and safety. Assuming that a car has some flexibility in its suspension system, say S = 0.3, the car could operate without a tilt system at a cant deficiency as high as approximately 7 inches, at which point the steady-state, carbody lateral acceleration would be 0.15g, which would correlate to an 8.6-degree roll angle between the floor and the horizontal when the vehicle is standing on track with 7 inches of superelevation. To operate at higher cant deficiencies and not exceed these limits, the vehicle would need to be equipped with a tilt system so that the floor actively tilts to compensate for the forces that would otherwise cause these limits to be exceeded.

Under current FRA requirements, using the above examples, a vehicle having a completely rigid suspension system (S = 0) could operate without a tilt system at a cant deficiency no higher than 6 inches, at which point the steady-state, carbody lateral acceleration would be 0.1g, which would correlate to a 5.7-degree roll angle between the floor and the horizontal when the vehicle is standing on track with 6 inches of superelevation. Assuming that a vehicle has some flexibility in its suspension system, again say S = 0.3, the vehicle could operate without a tilt system at a cant deficiency no higher than approximately 4.7 inches, at which point the steady-state, carbody lateral acceleration would be 0.1g, which would correlate to a 5.7-degree roll angle between the floor and the horizontal when the vehicle is standing on track with 4.7 inches of superelevation.

FRA notes that the less stringent steady-state, carbody lateral acceleration limit and carbody roll angle limit proposed in this rule would reduce the need to equip vehicles with tilt systems at higher cant deficiencies—and seemingly the costs associated with such features, as well. Moreover, by facilitating higher cant deficiency operations, savings could also result from shortened trip times. These savings could be particularly beneficial to passenger operations in emerging high-speed rail corridors, enabling faster operations through curves.

Of course, any such savings should not come at the expense of safety, and FRA is proposing additional track geometry requirements for operations above 5 inches of cant deficiency, whether or not the vehicles are equipped with tilt systems. These additional track geometry requirements were developed to control for undesirable vehicle response to track conditions that could pose derailment concerns. They may also help to control in some way for transient, carbody acceleration events that could pose ride safety concerns for passengers subjected to higher steady-state, carbody lateral acceleration levels, but they were not specifically developed to address such concerns and their effect has not been modeled. These additional track geometry requirements are being proposed to apply only to operations above 5 inches of cant deficiency, where steady-state, carbody lateral acceleration would approach 0.15g for typical vehicle designs. In this regard, during Task Force discussions, Amtrak stated that Amfleet equipment has been operating at up to 5 inches of cant deficiency (with approximately 0.13g steady-state, carbody lateral acceleration levels) without resulting in passenger ride safety issues. FRA is also not aware of any general passenger safety issue involving passengers losing their balance and falling due to excessive steady-state, carbody lateral acceleration levels in current operations.

Nonetheless, a transient carbody acceleration event that poses no derailment safety concern could very well cause a standing passenger to lose his or her balance and fall. Although FRA is not aware of much published data on the effect transient, carbody acceleration events have on passenger ride safety, it is recognized that the presence of steady-state, carbody lateral acceleration will generally reduce the margin of safety for standing passengers to withstand transient, lateral acceleration events and not lose their balance. If such passenger ride safety issues were more clearly identified, additional track geometry or other limits could potentially be proposed to address them. However, based on the information available to the Task Force, it did not recommend additional limits to address potential passenger ride safety concerns that may result from transient, carbody acceleration events alone or when combined with steady-state, carbody lateral acceleration. The Task Force also took into account that, as a mode of transportation offered to the general public, passenger rail travel need provide for passenger comfort. As a result, the riding characteristics of passenger rail vehicles should by railroad practice be held first to acceptable passenger ride comfort criteria, which would be more stringent than those for passenger ride safety.

To fully inform FRA's decisions in preparing the final rule arising from this NPRM, FRA is specifically inviting public comment on this discussion and the proposal to set the steady-state, carbody lateral acceleration limit at 0.15g. FRA requests specific comment on whether the proposed rule appropriately provides for passenger ride safety, and if not, requests that the commenters state what additional requirement(s) should be imposed, if any.

The proposed changes to this section would also separate and clarify the submittal requirements to FRA to obtain approval for the qualifying cant deficiency of a vehicle type (paragraph (f)) and to notify FRA prior to the implementation of the approved higher curving speeds (paragraph (g)). Additional clarification in paragraph (f) has been proposed regarding the submission of suspension maintenance information. This proposed requirement regarding the submission of suspension maintenance information would apply to vehicle types not subject to parts 238 or 229 of this chapter, such as a freight car operated in a freight train, and only to safety-critical components. Paragraph (g) would also clarify that in approving the request made pursuant to paragraph (f), FRA may impose conditions necessary for safely operating at the higher curving speeds.

FRA notes that existing footnote 3 would be redesignated as footnote 4 and modified in conformance with these proposed changes. The existing footnote reflects that this section currently allows a maximum of 4 inches of cant

deficiency; hence, the static lean test requirement to raise the car on one side by 4 inches. The existing footnote also specifies a cant excess requirement of 6 inches; hence, the requirement to then alternately lower the car to the other side by 6 inches. In the proposed revisions to this section, the 4-inch limit on cant deficiency would be removed and the cant-excess requirement would be addressed in revised paragraph (b), as discussed above, for all vehicles requiring qualification under § 213.345. Thus, this footnote would refer to "the proposed cant deficiency" instead of 4 inches of cant deficiency. FRA also notes that the statement in the current footnote that the "test procedure may be conducted in a test facility" would be removed. Testing may of course be conducted in a test facility but it is not mandated, and is not necessary to continue to reference in the footnote.

Existing paragraph (e) would be moved to new paragraph (h) and revised, principally by substituting "same vehicle type" for "same class of equipment" to be consistent with the proposed use of "vehicle type" in the regulation.

Paragraph (i) would be added to reference pertinent sections of subpart G, §§ 213.333 and 213.345, that contain requirements related to operations above 5 inches of cant deficiency. These sections include requirements for periodic track geometry measurements, monitoring of carbody acceleration, and vehicle/track system qualification. Specifically, in § 213.333, FRA is proposing to add periodic inspection requirements using a Track Geometry Measurement System (TGMS) to determine compliance with § 213.53, Track gage; § 213.55(b), Track alinement; § 213.57, Curves; elevation and speed limitations; § 213.63, Track surface; and § 213.65, Combined alinement and surface deviations. In sharper curves, for which cant deficiency was high but vehicle speeds were reflective of a lower track class, it was found that stricter track geometry limits were necessary, for the same track class, in order to provide an equivalent margin of safety for operations at higher cant deficiency. FRA is also proposing to add periodic monitoring requirements for cardbody accelerations, to determine compliance with the VTI safety limits in § 213.333. Moreover, the vehicle/track system qualification requirements in § 213.345 would apply to vehicle types intended to operate at any curving speed producing more than 5 inches of cant deficiency, and include, as appropriate, a combination of computer simulations, carbody acceleration testing, truck acceleration testing, and wheel/rail force measurements. FRA believes that these proposed requirements are necessary to apply to operations at high cant deficiency on lower-speed track classes. Section 213.369(f) would also be referenced, to make clear that inspection records be kept in accordance with the requirements of § 213.333, as appropriate.

Paragraph (j) would be added to clarify that vehicle types that have been permitted by FRA to operate over track with a cant deficiency, E_u, greater than 3 inches prior to the date of publication of the final rule in the **Federal Register**, would be considered qualified under this section to operate at any such permitted cant deficiency over the previously operated track segments(s). Before the vehicle type could operate over another track segment at such a cant deficiency, the vehicle type would have to be qualified as provided in this section.

Paragraph (k) would be added as a new paragraph to define "vehicle" and "vehicle type," as used in this section. As the term "vehicle" is used elsewhere in this part and the term "vehicle type" would be significant to the application of this section, both terms would be defined here.

Section 213.63 Track Surface

Track surface is the evenness or uniformity of track in short distances measured along the tread of the rails. Under load, the track structure gradually deteriorates due to dynamic and mechanical wear effects of passing trains. Improper drainage, unstable roadbed, inadequate tamping, and deferred maintenance can create surface irregularities, which can lead to serious consequences if ignored.

The current section specifies track surface requirements and would be re-designated as paragraph (a). Paragraph (a) would generally mirror the current section but would substitute the date "June 22, 1998" for the words "prior to the promulgation of this rule" in the asterisked portion of the table. The asterisk was added in the 1998 final rule and refers to that final rule, which was promulgated on June 22, 1998; consequently, FRA is proposing that the wording be made clearer so that it refers to the 1998 final rule—not the final rule arising from this NPRM.

The primary substantive change to this section would be the addition of new paragraph (b) containing tighter, single-deviation geometry limits for operations above 5 inches of cant deficiency on curved track. These limits would include both 31-foot and 62-foot MCO limits and a new limit for the difference in crosslevel between any two points less than 10 feet apart. FRA believes that adding these track geometry limits is necessary to provide an equivalent margin of safety for operations at higher cant deficiency. These proposed limits are based on the results of simulation studies, as discussed in Section III.B. of the preamble, above, to determine the safe amplitudes of track geometry surface variations.

Section 213.65 Combined Alinement and Surface Deviations

FRA is proposing to add a new section containing limits addressing combined alinement and surface deviations that would apply only to operations above 5 inches of cant deficiency. An equation-based safety limit would be established for alinement and surface deviations occurring in combination within a single chord length of each other. The limits in this section would be used only with a TGMS and applied on the outside rail in curves.

Although the current Track Safety Standards prescribe limits on geometry variations existing in isolation, FRA recognizes that a combination of alinement and surface variations, none of which individually amounts to a deviation from the requirements in this part, may result in undesirable vehicle response. Moreover, trains operating at high cant deficiencies will increase the lateral wheel force exerted on track during curving, thereby decreasing the margin of safety associated with the VTI wheel force safety limits in § 213.333. To address these concerns, simulation studies were performed, as discussed in Section III.B. of the preamble, above, to determine the safe amplitudes of combined track geometry variations. Results show that this proposed equation-based safety limit is necessary to provide a margin of safety for vehicle operations at higher cant deficiencies.

Section 213.110 Gage Restraint Measurement Systems

This section specifies procedures for using a Gage Restraint Measuring System (GRMS) to assess the ability of track to maintain proper gage. FRA is proposing to amend this section to make it consistent with proposed changes to the GRMS requirements in § 213.333, the counterpart to this section in subpart G. Specifically, FRA is proposing to replace the Gage Widening Ratio (GWR) with the Gage Widening Projection (GWP), which would compensate for the weight of the testing vehicle. FRA believes that use of the GWP would provide at least the same

level of safety and is supported by research results documented in the report titled "Development of Gage Widening Projection Parameter for the Deployable Gage Restraint Measurement System" (DOT/FRA/ORD–06/13, October 2006), which is available on FRA's Web site at *http://www.fra.dot.gov/downloads/Research/ord0613.pdf.* Moreover, by making the criteria consistent with the proposed changes to the GRMS requirements in § 213.333, a track owner or railroad would not have to modify a GRMS survey to compute a GWR for track Classes 1 through 5, and then a GWP for track Classes 6 through 9. The GWP formula would apply regardless of the class of track.

In substituting the GWP value for the GWR value, FRA is proposing to make a number of conforming changes to this section, principally to ensure that the terminology and references are consistent. These changes would be more technical than substantive, and they are neither intended to diminish nor add to the requirements of this section. In this regard, FRA notes that it is correcting the table in paragraph (l) to renumber the remedial action specified for a second level exception. The remedial action should be designated as (1), (2), and (3) in the "Remedial action required" column, consistent with how it is specified for a first level exception—not designated as footnote 2, (1), and (2), as it currently is.

FRA also notes that new footnote 5 would be added to this section, stating that "GRMS equipment using load combinations developing L/V ratios that exceed 0.8 shall be operated with caution to protect against the risk of wheel climb by the test wheelset." This footnote is identical in substance to existing footnote 7 (proposed to be redesignated to footnote 10 due to footnote renumbering), which is applicable to § 213.333, and would thus further promote conformity between this section and its subpart G counterpart.

Subpart G—Train Operations at Track Classes 6 and Higher

Section 213.305 Designation of Qualified Individuals; General Qualifications

This section recognizes that work on or about a track structure supporting high-speed train operations demands the highest awareness of employees of the need to perform their work properly. At the same time, the current wording of this section literally requires that each individual designated to perform such work know and understand the requirements of this subpart, detect deviations from those requirements, and prescribe appropriate remedial action to correct or safely compensate for those deviations, regardless whether that knowledge, understanding, and ability with regard to all of subpart G is necessary for that individual to perform his or her duties. For example, knowledge and understanding of specific vehicle qualification and testing requirements may be unnecessary for the performance of a track inspector's duties.

As a result, the Task Force recommended and FRA agrees that this rulemaking make clear that the requirements for a person to be qualified under subpart G concern those portions of this subpart necessary for the performance of that person's duties. FRA is therefore proposing to add to the end of paragraph (a)(2)(i) the words "that apply to the restoration and renewal of the track for which he or she is responsible," and to add to the end of paragraph (b)(2)(i) the words "that apply to the inspection of the track for which he or she is responsible."

This proposal would continue to require that a person designated under this section has the knowledge, understanding, and ability necessary to supervise the restoration and renewal of subpart G track, or to perform inspections of subpart G track, or both, for which he or she is responsible. At the same time, this proposal would make clear that the person would not be required to know or understand specific requirements of this subpart not necessary to the fulfillment of that person's duties. FRA does not believe that safety would be in any way diminished by this proposal. FRA believes that this proposal reflects what was intended when this section was established in the 1998 final rule.

Section 213.307 Classes of Track: Operating Speed Limits

Currently, this subpart provides for the operation of trains at progressively higher speeds up to 200 m.p.h. over four separate classes of track, Classes 6 through 9. The Task Force recommended that standards for Class 9 track be removed from this subpart and that the maximum allowable speed for Class 8 track be lowered from 160 m.p.h. to 150 m.p.h. Class 9 track was established in the 1998 final rule because of the possibility that certain operations would achieve speeds of up to 200 m.p.h. In addition, a maximum limit of 160 m.p.h. was established for Class 8 track in the 1998 final rule because trainsets had operated in this country up to that speed for periods of several months under waivers for testing and evaluation.

Although it was viewed in the 1998 final rule that standards for Class 9 track were useful benchmarks for future planning with respect to vehicle/track interaction, track structure, and inspection requirements, the Task Force noted that operations at speeds in excess of 150 m.p.h. are currently authorized by FRA only in conjunction with a rule of particular applicability (RPA) that addresses the overall safety of the operation as a system, per footnote 2 of this section. The vehicle/track interaction, track structure, and inspection requirements in an RPA would likely be specific to both the operation and system components used. Track geometry measurement systems, safety criteria, and safety limits might be quite different than currently defined. The Task Force therefore recommended that the safety of operations above 150 m.p.h. be addressed using a system safety approach and regulated through an RPA specific to the intended operation, and that the safety parameters in this subpart for general application to operations above 150 m.p.h. be removed, as a result.

Nonetheless, FRA has identified the continued need for benchmark standards addressing the highest speeds likely to be achieved by the most forward-looking, potential high-speed rail projects. As a result, FRA and the Volpe Center have conducted additional research and vehicle/track interaction simulations at higher speeds and concluded that Class 9 vehicle/track safety standards can be safely extended to include the highest contemplated speeds proposed to date—speeds of up to 220 m.p.h. FRA is including these benchmark standards in this NPRM.

FRA does intend to continue its discussions with the RSAC Task Force as any comments are addressed following the publication of this NPRM, and as noted earlier, the Task Force did not consider a comprehensive revision of all of Subpart G, including those requirements that are not distinguished by class of track. In this regard, "ballast pickup" (or flying ballast) has been subsequently identified as a potential issue for high-speed operations that may merit further consideration. Of course, FRA makes clear that the Class 9 standards would remain only as benchmark standards with the understanding that the final suitability of track safety standards for operations above 150 m.p.h. will be determined by FRA only after examination of the entire operating system, including the subject equipment, track structure, and other system attributes. Direct FRA approval

is required for any such high-speed operation, whether through an RPA or another regulatory proceeding.

As a separate matter, FRA notes that the rule would require the testing and evaluation of equipment for qualification purposes at a speed of 5 m.p.h. over the maximum intended operating speed, in accordance with § 213.345, and that, for example, this would require equipment intended to operate at a maximum speed of 160 m.p.h. to be tested at 165 m.p.h. FRA therefore makes clear that operating at speeds up to 165 m.p.h. for vehicle qualification purposes under this subpart would necessarily continue, subject to the requirements for the planning and safe conduct of such test operations. These test operations are separate from general purpose operations on Class 8 track that would be limited to a maximum speed of 160 m.p.h.

In addition, FRA is proposing to slightly modify the section heading so that it reads "Classes of track: operating speed limits," using the plural form of "class." This change is intended to make the section heading conform with the heading for § 213.9, the counterpart to this section for lower-speed track classes.

Section 213.323 Track Gage

This section contains minimum and maximum limits for gage, including limits for the change in gage within any 31-foot distance. FRA is proposing to modify the limit for the change in gage within any 31-foot distance from ½ inch to ¾ inch for Class 6 track. During Task Force discussions, Amtrak raised concern that for track constructed with wood ties and cut spikes, the ½-inch variation in gage limit is difficult to maintain. Tolerance values for the rail base, tie plate shoulders, and spikes can result in a ½-inch gage variation in well-maintained track, particularly due to daily temperature fluctuations of rail and associated heat-induced stresses.

In response to Amtrak's concern, FRA conducted modeling of track with variations in gage up to ¾ inch in 31-foot distances and found no safety concerns for the equipment modeled. Modeling was also conducted using 20 miles of actual measured track geometry with these variations in gage for speeds up to 115 m.p.h. without showing safety concerns for the equipment modeled. As a result, FRA believes that modifying this limit for the change of gage for Class 6 track, with a maximum permitted speed of 110 m.p.h, would not diminish safety and would reduce the burden on the track owner or railroad to maintain safe gage.

Section 213.327 Track Alinement

FRA is proposing to change this section primarily to add tighter, single-deviation geometry limits for operations above 5 inches of cant deficiency. These would include 31-foot, 62-foot, and 124-foot MCO limits in revised paragraph (c), with the current text of paragraph (c) moving to a new paragraph (d). As discussed in Section III.B. of the preamble, above, simulation studies have been performed to determine the safe amplitudes of track geometry alinement variations. Results of these studies have shown that the track geometry limits proposed in revised paragraph (c) are necessary in order to provide a margin of safety for operations at higher cant deficiency.

In addition, the current single-deviation, track alinement limits in paragraph (b) would be revised so as to distinguish between limits for tangent and curved track. Specifically, the 62-foot MCO limit for Class 6 curved track would be narrowed to five-eighths of an inch, while the tangent track limit would remain at the existing value of three-quarters of an inch. This proposed change is intended to provide consistency between the alinement limits for track Classes 5 and 6, as the Class 5 limit for curved track in § 213.55 is five-eighths of an inch. The 62-foot MCO limits for Class 7 and Class 8 tangent track would be increased to three-quarters of an inch, while the curved track limit would remain at the existing value of one-half of an inch. The 124-foot MCO limits for Class 8 tangent track would be increased to an inch, while the curved track limit would remain at the existing value of three-quarters of an inch. These proposed changes are also based on results of the simulations studies, as discussed in section III.B. of the preamble, above.

Other changes proposed herein include adding a paragraph (e), and modifying the section heading to better conform with the format of other sections in this part. Paragraph (e) is an adaptation of footnotes 1 and 2 from § 213.55, describing the ends of the chord and the line rail. Paragraph (e) would apply to all of the requirements in this section and is consistent with current practice.

Section 213.329 Curves; Elevation and Speed Limitations

Determining the maximum speed that a vehicle may safely operate around a curve is based on the degree of track curvature, actual elevation, and amount of unbalanced elevation, where the actual elevation and curvature are derived by a moving average technique. This approach, as codified in this section, is as valid in the high-speed regime as it is in the lower-speed track classes, and § 213.57 is the counterpart to this section for track Classes 1 through 5. FRA is proposing to revise this section, in particular to modify and clarify the qualification requirements and approval process for vehicles intended to operate at more than 3 inches of cant deficiency.

Paragraph (a) currently provides that the maximum crosslevel on the outside rail of a curve may not be more than 7 inches. This requirement would be restated to provide that the maximum elevation of the outside rail of a curve may not be more than 7 inches. Crosslevel is a function of elevation differences between two rails, and is the focus of other provisions of this proposal, specifically § 213.331, Track surface. The proposed clarification here is intended to limit the elevation of a single rail.

FRA notes that the Task Force recommended moving to § 213.331 the second requirement of paragraph (a), which provides that "[t]he outside rail of a curve may not be more than ½ inch lower than the inside rail." Instead, FRA has decided that this requirement should be re-written more clearly to restrict configuring track so that the outside rail of a curve is designed to be lower than the inside rail, while allowing for a deviation of up to one-half of an inch as provided in § 213.331, which now includes a proposal for a limit for reverse crosslevel deviation. This requirement in paragraph (a) is intended to restrict configuring track so that the outside rail of a curve is designed to be lower than the inside rail; the limits at issue in § 213.331 govern local deviations from uniform elevation—from the designed elevation—that occur as a result of changes in conditions. Rather than conflict, these provisions complement each other, addressing both the designed layout of a curve and deviations from that layout that result from actual use and wear.

Paragraph (b) has been added to address potential vehicle rollover and passenger safety issues should a vehicle be stopped or traveling at very low speed on superelevated curves. For this cant-excess condition the rule would require that all vehicles requiring qualification under § 213.345 must demonstrate that when stopped on a curve having a maximum uniform elevation of 7 inches, no wheel unloads to a value less than 50 percent of its static weight on level track. This proposed requirement would include an allowance for side-wind loading on the

vehicle to prevent complete unloading of the wheels on the high (elevated) rail and incipient rollover.

Paragraph (c) would continue to specify the V_{max} equation that sets the maximum allowable curving speed based on the qualified cant deficiency, E_u, for a vehicle type. New footnote 7 is proposed to be added to allow the vehicle to operate at the qualified cant deficiency for which it is approved, E_u, plus one-half of an inch, if actual elevation of the outside rail, E_a, and degree of track curvature, D, change as a result of track degradation. This one-half-inch margin would provide a tolerance to account for the effects of local crosslevel or curvature conditions on V_{max} that may result in the operating cant deficiency exceeding that approved for the equipment. Without this tolerance, these conditions could generate a limiting speed exception and some railroads have adopted the approach of reducing the operating cant deficiency of the vehicle in order to avoid these exceptions.

Existing footnote 4 would be redesignated as footnote 6, and a statement within the existing footnote would be removed regarding the application of the V_{max} equation to the spirals on both ends of the curve if E_u exceeds 4 inches. The V_{max} equation is intended to be applied in the body of the curve where the cant deficiency will be the greatest and the actual elevation and degree of curvature are determined according to the moving average techniques defined in the footnotes. Within spirals, where the degree of curvature and elevation are changing continuously, local deviations from uniform elevation and degree of curvature are governed by the limits in § 213.327 and § 213.331.

Existing footnote 5 would be redesignated as footnote 8 without substantive change.

Paragraph (d) would be revised to provide that all vehicle types are considered qualified for up to 3 inches of cant deficiency, as allowed by the current rule.

Paragraph (e) currently specifies two static lean test requirements for vehicle qualification for more than 3 inches of cant deficiency. When a vehicle is standing on superelevation equal to the proposed cant deficiency, the first requirement limits the vertical wheel load remaining on the raised wheels to no less than 60% of their static level values and the roll of a passenger carbody to 5.7 degrees with respect to the horizontal. The second, existing requirement addresses potential roll-over and passenger safety issues should a vehicle be stopped or traveling at very low speed on superelevated curves, by limiting the vertical wheel load remaining on the raised wheels to no less than 60% of their static level values and the roll of a passenger carbody to 8.6 degrees with respect to the horizontal. The latter requirement is intended to be addressed in paragraph (b), as discussed above, for all vehicles requiring qualification under § 213.345.

The proposed requirements in paragraph (e) could be met by either static or dynamic testing and are related to the proposed changes to the requirements in § 213.57. As proposed to be revised, the static lean test would limit the vertical wheel load remaining on the raised wheels to no less than 60% of their static level values and the roll of a passenger carbody to 8.6 degrees with respect to the horizontal, when the vehicle is standing on track with superelevation equal to the intended cant deficiency. The dynamic test would limit the steady-state vertical wheel load remaining on the low rail wheels to no less than 60% of their static level values and the lateral acceleration in a passenger car to 0.15g steady-state, when the vehicle operates through a curve at the intended cant deficiency. This 0.15g steady-state lateral acceleration limit in the dynamic test would provide consistency with the 8.6-degree roll limit in the static lean test, in that it corresponds to the lateral acceleration a passenger would experience in a standing (stationary) vehicle whose carbody is at a roll angle of 8.6 degrees with respect to the horizontal. The 5.7-degree roll limit, which limits steady-state, carbody lateral acceleration to 0.1g, would be eliminated from the existing rule.

The discussion of proposed § 213.57(e) should be read in connection with the requirements proposed in this paragraph. FRA refers commenters to that discussion and is generally not repeating it here. As noted, the less stringent steady-state, carbody lateral acceleration limit and carbody roll angle limit proposed in this rule would reduce the need to equip vehicles with tilt systems at higher cant deficiencies—and seemingly the costs associated with such features, as well. Moreover, by facilitating higher cant deficiency operations, savings could also result from shortened trip times. These savings could be particularly beneficial to passenger operations in emerging high-speed rail corridors, enabling faster operations through curves.

Of course, any such savings should not come at the expense of safety, and FRA is proposing additional track geometry requirements for operations above 5 inches of cant deficiency, whether or not the vehicles are equipped with tilt systems. These additional track geometry requirements were developed to control for undesirable vehicle response to track conditions that could pose derailment concerns. They may also help to control in some way for transient, carbody acceleration events that could pose ride safety concerns for passengers subjected to higher steady-state, carbody lateral acceleration levels, but they were not specifically developed to address such concerns and their effect has not been modeled. These additional track geometry requirements are being proposed to apply only to operations above 5 inches of cant deficiency, where steady-state, carbody lateral acceleration would approach 0.15g for typical vehicle designs. FRA does note that higher cant deficiencies are necessary to support high-speed operations on curved track, and, as a result, the additional track geometry requirements proposed in the NPRM for such high cant deficiency operations would likely be implicated.

FRA is not aware of any general passenger safety issue involving passengers losing their balance and falling due to excessive steady-state, carbody lateral accelerations in current operations. Yet, as noted in the discussion of § 213.57(e), FRA is concerned in particular about the effect transient, carbody lateral acceleration events that pose no derailment safety concerns may nonetheless have on passenger ride safety when combined with increased steady-state, carbody lateral acceleration forces. Consequently, to fully inform FRA's decisions in preparing the final rule arising from this NPRM, FRA is specifically inviting public comment on the proposal to set the steady-state, carbody lateral acceleration limit at 0.15g. FRA requests specific comment on whether the proposed rule appropriately provides for passenger ride safety, and if not, requests that the commenters state what additional requirement(s) should be imposed, if any.

The proposed changes also separate and clarify the submittal requirements to FRA to obtain approval for the qualifying cant deficiency of a vehicle type (paragraph (f)) and to notify FRA prior to the implementation of the approved higher curving speeds (paragraph (g)). Additional clarification has been proposed regarding the submission of suspension maintenance information. This proposed requirement regarding the submission of suspension maintenance information would apply to vehicle types not subject to part 238

or part 229 of this chapter, and only to safety-critical components. Paragraph (g) would also make clear that in approving the request made pursuant to paragraph (f), FRA may impose conditions necessary for safely operating at the higher curving speeds.

FRA notes that existing footnote 6 would be redesignated as footnote 9 and modified in conformance with the proposed changes. The existing footnote offers an example test procedure that provides measurements for up to 6 inches of cant deficiency and 7 inches of cant excess. This footnote would be modified for the general condition of "the proposed cant deficiency" rather than a specific example, and the cant excess requirement would be addressed through paragraph (b). FRA also notes that the statement in the current footnote that the "test procedure may be conducted in a test facility" would be removed. Testing may of course be conducted in a test facility but it is not mandated, and is not necessary to continue to reference in the footnote.

The requirements of existing paragraph (f) would be moved to paragraph (h) and revised, principally by substituting "same vehicle type" for "same class of equipment" to be consistent with the proposed use of "vehicle type" in the regulation.

Paragraph (i) is proposed to be added to clarify that vehicle types that have been permitted by FRA to operate at a cant deficiency, E_u, greater than 3 inches prior to [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], would be considered qualified under this section to operate at any such permitted cant deficiency over the previously operated track segments(s). Before the vehicle type could operate over another track segment at such cant deficiency, the vehicle type would have to be qualified as provided in this section.

Paragraph (j) would be a new paragraph for defining "vehicle" and "vehicle type," as used in this section and in §§ 213.333 and 213.345. These terms would have the same meaning as in proposed § 213.57(k) and are being defined here so that they would apply to the appropriate sections of subpart G.

Section 213.331 Track Surface

This section is the counterpart to § 213.63 and is intended for higher-speed track classes.

Three changes have been proposed to the existing single-deviation, track surface limits in paragraph (a). Specifically, the 124-foot MCO limit for Class 9 track would be reduced to 1 inch. This proposed change is based on a review of simulation results of Acela equipment. Further, the limit for the difference in crosslevel between any two points less than 62 feet apart would be reduced to 1¼ inch for Class 8 track, and 1 inch for Class 9 track. These proposed changes are intended to provide consistent safety limits based on the results of simulation studies conducted for short warp conditions.

In addition, three new limits are proposed to be added to the existing single-deviation, track surface limits in paragraph (a). Two of these limits (deviation from zero crosslevel on tangent track, and reverse elevation for curved track), although not explicitly stated in the current table, are applicable to track Classes 6 through 9 because these higher track classes must meet at least the minimum geometry requirements for track Classes 1 through 5. These two limits would be expressly added in order to make this section comprehensive. Specifically, the existing 1-inch limit for deviation from zero crosslevel on tangent Class 5 track, as specified in § 213.63, would be added for track Classes 6 through 9. Second, the ½-inch reverse elevation limit for curved track, as currently specified in § 213.329(a), would be moved to this section. The third limit, a new limit for the difference in crosslevel between any two points less than 10 feet apart (short warp), would be added to paragraph (a). It should be noted that the Task Force proposed that the existing 1-inch runoff limit for Class 5 track, as specified in § 213.63, be added for higher track classes. However, FRA believes that appropriate surface requirements have already been established in § 213.331 that address this issue and thus has not included this limit in the proposed rule.

FRA is proposing to add tighter geometry limits for operations above 5 inches of cant deficiency in revised paragraph (b). These would include 124-foot MCO limits and a new limit for the difference in crosslevel between any two points less than 10-feet apart (short warp). The text of existing paragraph (b) would be moved to new paragraph (c). As discussed in Section III.B. of the preamble, above, simulation studies have been performed to determine the safe amplitudes of surface track geometry variations. Results show that the proposed track geometry limits proposed in revised paragraph (b) are necessary in order to provide an equivalent margin of safety for operations at higher cant deficiency.

Section 213.332 Combined Alinement and Surface Deviations

FRA is proposing to add a new section containing limits addressing combined alinement and surface deviations that would apply only to high-speed operations above 5 inches of cant deficiency, as well as any operation at Class 9 speeds. An equation-based safety limit would be established for alinement and surface deviations occurring in combination within a single chord length of each other. The limits in this section would be used only with a TGMS. They would be applied on the outside rail in curves, and for Class 9 track operations would be applied on the outside rail in curves as well as to any of the two rails of a tangent section.

See the discussion of § 213.65, which is the companion provision to this section for lower-speed classes of track.

Section 213.333 Automated Vehicle Inspection Systems

FRA is proposing many significant changes to this section, which contains requirements for automated measurement systems—namely, track geometry measurement systems, gage restraint measurement systems, and the systems necessary to monitor vehicle/track interaction (acceleration and wheel/rail forces).

In paragraph (a), FRA is proposing to add TGMS inspection requirements for low-speed, high cant deficiency operations, which would apply as required by § 213.57(i). As previously noted, FRA believes that these requirements are appropriate and necessary for operations at high cant deficiency on lower-speed track classes. FRA is also proposing to add TGMS inspection requirements for Class 6 track. For Class 7 track, FRA is proposing to reduce slightly the minimum period between required TGMS inspections. The current Class 7 track inspection frequency of twice within 120 calendar days with not less than 30 days between inspections would be reduced to not less than 25 days between inspections so that more frequent inspections could be performed, for example, monthly. This would provide the railroad additional flexibility for operational reasons to comply in the event of incomplete inspections. The proposed frequency would require that the time interval between any two successive inspections be not less than 25 calendar days and not more than 95 calendar days. The current Class 8 and 9 track TGMS inspection frequency of twice within 60 calendar days with not less than 15 days between inspections would be reduced to not less than 12 days between inspections so that more frequent inspections could be performed, for example, bi-weekly. This would also provide the railroad additional

flexibility for operational reasons to comply in the event of incomplete inspections. The proposed frequency would require that the time interval between any two successive inspections be not less than 12 calendar days and not more than 48 calendar days.

In paragraph (b), FRA is proposing to amend the TGMS sampling interval to not exceed 1 foot. This requirement is in line with current practices to provide sufficient data to identify track geometry perturbations.

In paragraph (c), FRA is proposing to specify the application of the added TGMS inspection requirements for high cant deficiency operations on lower-speed track classes. These requirements in subpart G would apply to vehicle types intended to operate at any curving speed producing more than 5 inches of cant deficiency, as provided in § 213.57(i). Existing requirements for track Classes 6 through 9 would be amended to reference § 213.332, the newly proposed section for combined alinement and surface defects.

Paragraphs (d) through (g) would remain unchanged.

As noted in the discussion of § 213.110, FRA is also proposing changes to the GRMS testing requirements in paragraphs (h) and (i), to reflect recommendations made in the FRA report titled "Development of Gage Widening Projection Parameter for the Deployable Gage Restraint Measurement System," *see* above. These changes include replacing the GWR equation (and all references to GWR) with a GWP equation, which would compensate for the weight of the testing vehicle. This correction would result in more uniform strength measurements across the variety of testing vehicles that are in operation. FRA is also proposing that the Class 8 and 9 track inspection frequency of once per year with not less than 180 days between inspections be rewritten to require at least one inspection per calendar year with not less than 170 days between inspections, to allow some additional flexibility in scheduling inspections. The proposed frequency would require that the time interval between any two successive inspections would not be less than 170 days and not more than 730 days.

FRA is proposing to revise the wording and requirements in paragraphs (j) and (k), which relate to carbody and truck accelerometer monitoring. Proposed changes include adding the option to use a portable device when performing the acceleration monitoring and clarifying where the carbody and truck accelerometers would be located. Monitoring requirements would be added for operations above 5 inches of cant deficiency on track Classes 1 through 6, in order to provide for the safety of these operations. These proposed requirements for monitoring high cant deficiency operations would apply to vehicle types qualified to operate at any curving speed producing more than 5 inches of cant deficiency, as provided in §§ 213.57(i) and § 213.345(a), as appropriate. The monitoring requirements and qualification requirements in the rule for carbody and truck accelerations would thereby continue to work together, as the current monitoring requirements for track Classes 7 through 9 are likewise intended to apply to vehicles that have been qualified to operate under § 213.345.

As discussed in Section III.A. of the preamble, FRA is proposing to revise the requirement in existing paragraph (j) to monitor carbody and truck accelerations each day on at least one vehicle in one train operating at track Class 8 and 9 speeds. Based on data collected to date and to reduce unnecessary burden on the track owner or railroad operating the vehicle type, this monitoring frequency would be reduced from once per day to at least four times per week for carbody accelerations, and twice within 60 days for truck accelerations. In addition, a clause would be added to revised paragraph (k) to allow the track owner or operating railroad to petition FRA, after a specified amount of time or mileage, to eliminate the periodic vehicle track interaction truck accelerometer monitoring requirement for Class 8 and 9 track. Nonetheless, FRA notes that in addition to these requirements, pursuant to § 238.427, truck acceleration is continuously monitored on each Tier II vehicle in order to determine if hunting oscillations of the vehicle are occurring during revenue operation.

FRA is proposing to modify the current requirement in paragraph (l) for conducting instrumented wheelset (IWS) testing on Class 8 and 9 track so that IWS testing would no longer be a general requirement applicable for all Class 8 and 9 track. Instead, the specific necessity to perform this testing would be determined by FRA on a case-by-case basis, after performing a review of a report annually submitted to it detailing the accelerometer monitoring data collected in accordance with paragraphs (j) and (k) of this section. A thorough review of the Acela trainset IWS data, as well as consideration of the economics associated with the testing, revealed that there was significant cost and little apparent safety benefit to justify IWS testing as a general requirement on an annual basis. FRA believes that the testing and monitoring requirements in this section, as a whole, that would be generally required, together with FRA's oversight and ability to impose IWS testing requirements as needed, would be sufficient to maintain safety at a lower cost.

FRA is proposing to make conforming changes to paragraph (m), which currently requires that the track owner maintain a copy of the most recent exception printouts for the inspections required under current paragraphs (k) and (l) of this section. Because of the proposed revisions to this section, paragraph (m) would reference the inspections required under paragraphs (j) and (k) of this section, and paragraph (l), as appropriate, should IWS testing be required. FRA notes that the Task Force did not specifically propose to retain paragraph (m), seemingly because of the proposed addition in paragraph (l) of an annual requirement to provide an analysis of the monitoring data gathered for operations on track Classes 8 and 9. However, while this proposed reporting requirement in paragraph (l) would be new, it is intended to support amending the IWS testing requirements so that IWS testing would no longer be generally required for Class 8 and 9 operations, as discussed above. Moreover, the reporting requirement is only an annual one and, by virtue of applying only to Class 8 and 9 operations, would not address lower-speed operations. In addition, the Task Force did not specifically propose to amend § 213.369(f), which provides that each vehicle/track interaction safety record required under §§ 213.333(g) and (m) be made available for inspection and copying by FRA at a specified location. In fact, the Task Force did recommend referencing § 213.369(f) for lower-speed, high cant deficiency operations, as proposed in § 213.57(i). Overall, FRA believes that it was an oversight for the Task Force not to propose retaining paragraph (m) and that it is both good practice and essential for FRA oversight to continue keeping the most recent records of exceptions as provided in paragraph (m). FRA is therefore proposing to retain paragraph (m), as modified.

Substantial changes are proposed to be made to the content of the Vehicle/Track Interaction Safety Limits Table (VTI Table). In general, the "Requirements" for most of the limits are proposed to be clarified or updated. Specifically, the Single Wheel Vertical Load Ratio limit would be tightened from 0.10 to 0.15 to ensure an adequate safety margin for wheel unloading.

The Net Axle Lateral L/V Ratio limit would be modified from 0.5, to 0.4 + $5.0/V_a$, so as to take into account the effect of axle load and would more appropriately reflect the cumulative, detrimental effect of track panel shift from heavier vehicles. This net axle lateral load limit is intended to control excessive lateral track shift and is sensitive to a number of track parameters. The well-established, European Prud'homme limit is a function of the axle load and this sensitivity was desired to differentiate between coach car and heavier locomotive loads. The Volpe Center's Treda (Track REsidual Deflection Analysis) simulation work, testing at TTCI, and comparison to the Prud'homme limit all indicated the dependence on axle load and the importance of initial small lateral deflections. Representatives of the Task Force independently reviewed the Volpe Center analysis and concurred with the proposed change. The limiting condition would allow for a small initial deformation and assumes a stable configuration with the accumulation of additional traffic.

Due to variations in vehicle design requirements and passenger ride safety, the carbody acceleration limits are proposed to be divided into separate limits for "Passenger Cars" and those for "Other Vehicles" (such as conventional locomotives). In addition, the carbody transient acceleration limits are proposed to be modified from 0.5g lateral and 0.6g vertical, to 0.65g for passenger cars and 0.75g for other vehicles in the lateral direction and 1.0g for both passenger cars and other vehicles in the vertical direction. These changes were proposed after considerable research into the performance of existing vehicles during qualification testing and revenue operations. Overall, it was found that the existing carbody transient acceleration limits need not be as stringent to protect against events leading to vehicle or passenger safety issues.

Based on the small energy content associated with high-frequency acceleration events of the carbody, FRA is proposing to add text to exclude any transient acceleration peaks lasting less than 50 milliseconds. Other changes proposed include the addition of new limits for sustained carbody lateral and vertical oscillatory accelerations, as well as the addition of minimum requirements for sampling and filtering of the acceleration data. The sustained carbody oscillatory acceleration limits have been proposed in response to a review of data that was obtained during qualification testing for the MARC–III multi-level passenger car, as discussed in Section III.A. of the preamble. The sustained carbody oscillatory acceleration limits are proposed to be 0.10g RMSt for passenger cars and 0.12g RMSt for other vehicles in the lateral direction, and 0.25g RMSt for both passenger cars and other vehicles in the vertical direction. These new limits would require that the RMSt (root mean squared with linear trend removed) value be used in order to attenuate the effects of the linear variation in oscillatory accelerations resulting from negotiation of track segments with changes in curvature or grade by design, such as spirals. Root mean squared values would be determined over a sliding 4-second window with linear trend removed and be sustained for more than 4 seconds. Acceleration measurements would be processed through a low pass filter with a minimum cut-off frequency of 10 Hz and the sample rate for oscillatory acceleration data would be at least 100 samples per second.

The last set of proposed changes to the VTI Table concern the truck lateral acceleration limit used for the detection of truck hunting. This limit would be tightened from 0.4g to 0.3g and would specify that the value must exceed that limit for more than 2 seconds. Analyses conducted by FRA have shown that this would help to better identify the occurrences of excessive truck hunting, while excluding high-frequency, low-amplitude oscillations that would not require immediate attention. In addition, the revised limit would require that the RMS_t value be used rather than the RMS_m (root mean squared with mean removed) value. FRA believes this proposed change would improve the process for analyzing data while the vehicle is negotiating spiral track segments.

Section 213.345 Vehicle/Track System Qualification

As part of the 1998 Track Safety Standards final rule, all rolling stock (both passenger and freight) was required to be qualified for operation for its intended track class. However, this section "grandfathered" equipment that had already operated in specified track classes. Rolling stock operating in Class 6 track within one year prior to the promulgation of the 1998 final rule was considered qualified. Further, vehicles operating at Class 7 track speeds under conditional waivers prior to the promulgation of the 1998 rule were qualified for Class 7 track, including equipment that was then-operating on the Northeast Corridor at Class 7 track speeds. For equipment not "grandfathered," qualification testing was intended to ensure that the equipment not exceed the VTI Table limits specified in § 213.333 at any speed less than 10 m.p.h. above the proposed maximum operating speed.

FRA is proposing a number of significant changes to this section, whose heading would be modified from "Vehicle qualification testing" to "Vehicle/track system qualification" to more appropriately reflect the interaction of the vehicle and the track over which it operates as a system. These changes include modifying and clarifying this section's substantive requirements, reorganizing the structure and layout of the rule text, and revising the qualification procedures. Among the changes proposed, lower-speed, high cant deficiency operations would be subject to this section in accordance with § 213.57(i).

Paragraph (a), as proposed to be revised, would require all vehicle types intended to operate at Class 6 speeds or above or at any curving speed producing more than 5 inches of cant deficiency to be qualified for operation for their intended track classes in accordance with this subpart. For qualification purposes, the current over-speed testing requirement would be reduced from 10 m.p.h. to 5 m.p.h. above the maximum proposed operating speed. FRA agrees with the Task Force's view that the existing 10 m.p.h. over-speed testing requirement, which was established as part of the 1998 final rule, is overly conservative based on improved speed control and display technology deployed in current operations.

Paragraph (b) would address qualification of existing vehicle types and make clear that grandfathered equipment would be considered qualified to operate over previously-operated track segment(s) only. Grandfathered equipment would not be qualified to operate over new routes (even at the same track speeds) without meeting the requirements of this section.

Paragraph (c) would contain the requirements for new vehicle qualification. The additional (and tighter) carbody acceleration limits in current paragraph (b) for new vehicle qualification are proposed to be removed. In their place, this section would refer to § 213.333 for the applicable VTI limits for accelerations and wheel/rail forces. This change was proposed after considerable research into the performance of existing vehicles during qualification testing and revenue operations. Overall, it was found that the acceleration limits in

current paragraph (b) need not be as stringent to protect against events leading to vehicle or passenger safety issues.

For new vehicles intending to operate at track Class 6 speeds or above, or at any curving speed producing more than 5 inches of cant deficiency, the qualification requirements would include, as appropriate, a combination of computer simulations, carbody acceleration testing, truck acceleration testing, and wheel/rail force measurements. Computer simulations would be required for all operations at track Class 6 through Class 9 speeds or for any operations above 6 inches of cant deficiency. These simulations would be conducted on both an analytically defined track segment representative of minimally compliant track conditions (MCAT) for the respective track classes as specified in appendix D to this part and on a track segment representative of the full route on which the vehicle type is intended to operate. (*See* the discussion of MCAT in appendix D, below.) Carbody acceleration testing would be required for all operations at track Class 6 speeds or above, or for any operations above 5 inches of cant deficiency. Truck acceleration testing would be required for all operations at track Class 6 speeds or above. Wheel/rail force measurements, through the use of instrumented wheelsets (or equivalent devices), would be required for all operations at track Class 7 speeds or above, or for any operations above 6 inches of cant deficiency.

In paragraph (d), FRA is proposing to add a qualification requirement for previously qualified vehicles intended to operate on new track segments. This requirement would ensure that when qualified vehicles currently in operation are intended to operate on a new route, the new vehicle/track system is adequately examined for deficiencies prior to revenue service operation. For previously qualified vehicles intending to operate on new routes at track Class 6 through Class 9 speeds and at cant deficiencies greater than 4 inches, or at any curving speed producing more than 5 inches of cant deficiency, the qualification requirements would also include, as appropriate, a combination of computer simulations, carbody acceleration testing, truck acceleration testing, and wheel/rail force measurements. Specifically, for all operations at track Class 7 speeds or above, or for any operations above 6 inches of cant deficiency, either computer simulations or measurement of wheel/rail forces would be required. For track Classes 6 through 9, carbody acceleration testing would be required for all operations above 4 inches of cant deficiency. Carbody acceleration testing would also be required for any operations above 5 inches of cant deficiency. For all operations at track Class 7 through Class 9 speeds, truck acceleration testing would be required.

Paragraph (e) would clarify the current requirements in existing paragraph (c) for the content of the qualification test plan and would add a requirement for the plan to be submitted to FRA at least 60 days prior to conducting the testing.

Paragraph (f) would contain the requirements for conducting qualification testing, expanding on the current requirements in this section. For instance, this paragraph would expressly require that a TGMS vehicle be operated over the intended test route within 30 days prior to the start of the testing. This paragraph would also make clear that any exceptions to the safety limits that occur on track or at speeds that are not part of the test do not need to be reported. For example, any exception to the safety limits that would occur at speeds below track Class 6 speeds when the cant deficiency is at or below 5 inches would not need to be reported.

Paragraph (g) contains the requirements for reporting to FRA the results of the qualification program. Pursuant to paragraph (h), FRA would approve a maximum train speed and value of cant deficiency for revenue service, based on the test results and submissions. Paragraph (h) would also make clear that FRA may impose conditions necessary for safely operating at the maximum train speed and value of cant deficiency approved for revenue service.

Section 213.355 Frog Guard Rails and Guard Faces; Gage

This section currently sets limits for guard check and guard face gage for track Classes 6 through 9. FRA is proposing to make minor changes to the way in which the requirements of this section are formatted. However, no substantive change is intended.

Appendix A to Part 213—Maximum Allowable Curving Speeds

This appendix currently contains two charts showing maximum allowable operating speeds in curves, by degree of curvature and inches of unbalance (cant deficiency). Table 1 applies to curves with 3 inches of unbalance; Table 2 to curves with 4 inches of unbalance. Because FRA is proposing to increase allowable cant deficiencies, this appendix would be expanded to include two additional tables, Tables 3 and 4, which would apply, respectively, to curves with 5 and 6 inches of unbalance. While this rule does provide for operations at higher levels of unbalance, for convenience FRA is including those additional tables that it believes would be helpful for more common use.

Appendix B to Part 213—Schedule of Civil Penalties

Appendix B to part 213 contains a schedule of civil penalties for use in connection with this part. FRA intends to revise the schedule of civil penalties in issuing the final rule to reflect revisions made to part 213. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions for each proposed regulatory section, either added or revised, that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

Appendix D to Part 213—Minimally Compliant Analytical Track (MCAT) Simulations Used for Qualifying Vehicles To Operate at High Speeds and at High Cant Deficiencies

The Track Safety Standards require that vehicles demonstrate safe operation for various track conditions. Computational models have become practical and reliable tools for understanding the dynamic interaction of vehicles and track, as a result of advancements made over the last few decades. Consequently, portions of the qualification requirements in subpart G could effectively be met by simulating vehicle testing using a suitably-validated vehicle model instead of testing an actual vehicle over a representative track segment. Such models are capable of assessing the response of vehicle designs to a wide range of track conditions corresponding to the limiting conditions allowed for each class of track.

Appendix D would be a new appendix containing requirements for the use of computer simulations to comply with the vehicle/track system qualification testing requirements specified in subpart G of this part. These simulations would be performed using a track model containing defined geometry perturbations at the limits that are permitted for a class of track and level of cant deficiency. This track

model is referred to as MCAT. These simulations would be used to identify vehicle dynamic performance issues prior to service, and demonstrate that a vehicle type is suitable for operation on the track over which it would operate.

In order to validate a computer model using MCAT, the predicted results must be compared to actual data from on-track, instrumented vehicle performance testing using accelerometers, or other instrumentation, or both. Validation must also demonstrate that the model is sufficiently robust to capture fundamental responses observed during field testing. Disagreements between predictions and test data may be indicative of inaccurate vehicle parameters, such as stiffness and damping, or track input. Once validated, the computer model can be used for assessment of a range of operating conditions or even to examine modifications to current designs.

FRA notes that the length of each MCAT segment in this appendix is the same segment length that was used in the modeling of several representative high-speed vehicles. *See* the discussion of computer modeling in section III.B. of this NPRM, above, for additional background.

Proposed Amendments to 49 CFR Part 238, Passenger Equipment Safety Standards

Subpart C—Specific Requirements for Tier I Passenger Equipment

Section 238.227 Suspension System

FRA is proposing to modify this section to conform with the changes being proposed to part 213 of this chapter and also to provide cross-references to relevant sections of part 213. Overall, these proposed revisions would help to reconcile the requirements of the 1998 Track Safety Standards final rule and the 1999 Passenger Equipment Safety Standards final rule for Tier I passenger equipment.

For consistency throughout this part and part 213 of this chapter, the term "hunting oscillations" in paragraph (a) would be replaced with the term "truck hunting," which would have the same meaning as that for "truck hunting" in 49 CFR 213.333. Truck hunting would be defined in § 213.333 as "a sustained cyclic oscillation of the truck evidenced by lateral accelerations exceeding 0.3g root mean squared for more than 2 seconds." The Task Force believed that the current term "hunting oscillations," defined as "lateral oscillations of trucks that could lead to a dangerous instability," has a less definite meaning and could be applied unevenly as a result. The Task Force therefore preferred using the definition of "truck hunting" with its more specific criteria, and FRA agrees that more specific criteria would provide more certainty. Unlike § 213.333, however, paragraph (a) of this section would apply to all Tier I passenger equipment, regardless of track class or level of cant deficiency.

The existing pre-revenue service qualification requirements in paragraph (b) are proposed to be revised consistent with the proposed revisions to part 213 of this chapter. Paragraph (b) would also be broadened to address revenue service operation requirements. Paragraph (b), as proposed to be revised, would in effect generally summarize the qualification and revenue service operation requirements of part 213 for Tier I passenger equipment. This proposed paragraph is not intended to impose any requirement itself not otherwise contained in part 213.

Subpart E—Specific Requirements for Tier II Passenger Equipment

Section 238.427 Suspension System

Similar to the revisions proposed for § 238.227, FRA is proposing to modify this section to conform to the changes being proposed in part 213 of this chapter. Overall, these proposed revisions would help to reconcile the requirements of the 1998 Track Safety Standards final rule and the 1999 Passenger Equipment Safety Standards final rule.

While paragraph (a)(1) would remain unchanged, paragraph (a)(2) would be revised in an effort to summarize the qualification and revenue service operation requirements of part 213 for Tier II passenger equipment. The reference to the suspension system safety standards in appendix C would be removed, as discussed below. The existing carbody acceleration requirements in paragraph (b) would be revised consistent with the proposed changes to part 213. The current steady-state lateral carbody acceleration limits of 0.1g for pre-revenue service qualification and 0.12g for service operation are proposed to be revised to a single limit of 0.15g, to conform to the proposed requirements in § 213.329. Please *see* the discussion of § 213.329. The remaining carbody acceleration requirements would be consolidated by referencing the requirements of § 213.333.

Similar to the proposed revision of § 238.227, the term "truck hunting" in paragraph (c) would have the same meaning as that proposed for "truck hunting" in § 213.333.

The Task Force believed that the overheat sensor requirements in existing paragraph (d) are not directly related to suspension system safety and should be specified elsewhere. FRA agrees that the requirements of this paragraph can be stated separately for clarity, and is therefore proposing to move them to a new section, § 238.428.

Section 238.428 Overheat Sensors

FRA is proposing to add a new section containing the requirements currently found in § 238.427(d). No change to the current rule text is proposed, however. FRA agreed with the Task Force that the requirements for overheat sensors would be more appropriately contained in their own section rather than with the requirements for suspension systems in § 238.427.

Appendix A to Part 238—Schedule of Civil Penalties

Appendix A to part 238 contains a schedule of civil penalties for use in connection with this part. FRA intends to revise the schedule of civil penalties in issuing the final rule to reflect revisions made to part 238. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions for each proposed regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

Appendix C to Part 238—Suspension System Safety Performance Standards

FRA is proposing to remove and reserve appendix C, which currently includes the minimum suspension system safety performance standards for Tier II passenger equipment. FRA believes that removing appendix C is appropriate in light of the proposal to amend § 238.427(a)(2). Currently, § 238.427(a)(2) requires that Tier II passenger equipment meet the safety performance standards for suspension systems contained in appendix C, or alternative standards providing at least equivalent safety if approved by FRA under § 238.21. As discussed above, FRA is proposing to revise § 238.427(a)(2) to require compliance with the safety standards contained in § 213.333, instead of those in this appendix C. Given the proposal to cross-reference the requirements in § 213.333,

which are more extensive than the ones contained in this appendix C, appendix C would no longer be necessary and would therefore be removed and reserved.

V. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under both Executive Order 12866 and DOT policies and procedures. *See* 44 FR 11034; February 26, 1979. FRA has analyzed the costs and benefits of this proposed rule. FRA believes that the cost savings would offset any new cost burden. Even if that were not the case, FRA is confident that the benefits and the cost savings, taken together, would exceed any additional cost burden. As noted above, the Task Force developed proposals intended to result in improved public safety while reducing the burden on the railroad industry where possible.

Below is an analysis of four main things that the proposed rulemaking would accomplish:

1. The rulemaking would revise the current regulation in subpart G of part 213, which has performance standards and specifications for track geometry for track Classes 6 and higher, and which offers affected railroads and car manufacturers the ability to arrive at a mutually-beneficial set of car dynamics and track engineering standards. In practice, the one impacted railroad, Amtrak, has asked manufacturers to build equipment that will meet the performance standards at the maximum deviations permitted under the geometric standards, as opposed to geometric parameters that would permit current high-speed passenger equipment to meet the acceleration and other performance requirements. Manufacturers state that this has proved unworkable because they cannot build equipment economically that can meet the acceleration and other performance standards when the track is at the maximum permissible deviations, using technology in production today. Overall, FRA has reviewed the performance standards in light of advanced simulations that were developed to support the rulemaking effort, as discussed in Section III of the preamble, and has proposed to refine those standards to better focus on identified safety concerns and remove any unnecessary costs.

2. The rulemaking would add flexibility through procedures for safely permitting high cant deficiency operations on track Classes 1 through 5, without the need for obtaining a waiver. In order to take advantage of higher cant deficiency operations, a railroad would have to qualify the equipment and maintain the track to more stringent standards. Railroads would take advantage of this flexibility to the extent that they expect the benefits from doing so would exceed the costs.

3. The rulemaking would institute more cost-effective equipment qualification and in-service monitoring requirements. Railroads could discontinue annual use of instrumented wheelsets for in-service validation, and could avoid some tests that have not provided useful data. Further, railroads could use MCAT to extend territories in which qualified equipment may operate.

4. The rulemaking would clarify that individuals qualified to inspect track need only understand the parts of the regulation relevant to the inspections they conduct and the work they perform.

Impacts

The proposed changes to geometric standards and performance standards for high-speed operations would not impact any existing high-speed operations, which are now limited to Amtrak on the Northeast Corridor, but would rather promote their safe operation. If Amtrak were to attempt to operate Acela at the current maximum allowable speeds and cant deficiencies for which it is qualified, but were to allow track deviations to reach current limits, the Acela trainset, because of its dynamic characteristics, would be subject to accelerations in excess of the limits now permitted. FRA's modeling to date has shown that Acela, as it is currently qualified to operate, would meet the safety standards proposed in this rulemaking. Future high-speed operations would be made simpler, because the railroad, if it requires equipment manufacturers to provide equipment that would meet performance requirements on minimally compliant track, would find several suppliers of off-the-shelf equipment, likely lowering bid prices and gaining multiple bidders. Assuming that absent this rulemaking, railroads would seek to have new equipment used in high-speed train operations built to performance standards at the maximum deviations permitted under the geometric standards, FRA estimates that future high-speed operations would save in the neighborhood of $2,000,000 per trainset on bids because of the simplification of the design process. FRA believes that it is not unreasonable to assume that 40 trainsets would be affected, based on current proposals for high-speed rail, and has distributed the estimated procurement dates in years 6 through 10. The annual savings would be 8*$2,000,000 (or $16,000,000) and the net discounted savings would be $46,774,146.

TABLE 1—ESTIMATED EQUIPMENT PROCUREMENT BENEFIT

Year	Annual benefit	Discount factor	Annual discounted benefit	Cumulative discounted benefit
1	$0	0.93	$0	$0
2	0	0.87	0	0
3	0	0.82	0	0
4	0	0.76	0	0
5	0	0.71	0	0
6	16,000,000	0.67	10,661,476	10,661,476
7	16,000,000	0.62	9,963,996	20,625,471
8	16,000,000	0.58	9,312,146	29,937,617
9	16,000,000	0.54	8,702,940	38,640,557
10	16,000,000	0.51	8,133,589	46,774,146
11	0	0.48	0	46,774,146
12	0	0.44	0	46,774,146
13	0	0.41	0	46,774,146
14	0	0.39	0	46,774,146

TABLE 1—ESTIMATED EQUIPMENT PROCUREMENT BENEFIT—Continued

Year	Annual benefit	Discount factor	Annual discounted benefit	Cumulative discounted benefit
15	0	0.36	0	46,774,146
16	0	0.34	0	46,774,146
17	0	0.32	0	46,774,146
18	0	0.30	0	46,774,146
19	0	0.28	0	46,774,146
20	0	0.26	0	46,774,146

The provisions for high cant deficiency operations on all track classes are permissive in nature and would create no additional costs. A railroad could either adhere to these provisions in expectation that any additional expenditure would trigger savings and result in an overall net benefit, or simply avoid triggering the provisions. High cant deficiency offers significant opportunities to reduce trip time, as it would reduce the amount of time travelled at the slowest speeds. For example, to travel a mile, a train could take 3 minutes at 20 m.p.h. or 2 minutes at 30 m.p.h. Traveling at 30 m.p.h. would reduce trip time by a minute. By contrast, a train traveling at 120 m.p.h. would take 5 minutes to travel 10 miles, while a train traveling at 150 mph would take 4 minutes to travel the same distance, reducing trip time by 1 minute relative to the train traveling at 120 m.p.h. The net time savings from traveling one mile at 30 m.p.h. instead of at 20 m.p.h. is the same as the time savings from traveling 10 miles at 150 m.p.h. instead of at 120 m.p.h. High cant deficiency can allow that kind of time savings at lower speeds, and therefore offers a relatively low-cost way of improving trip time. The United States is investing more in passenger rail transportation and this would be a very good way to make the high-speed rail system more efficient.

FRA believes that use of higher cant deficiencies will become much more common over the next years, although, nearer-term, relatively fewer opportunities for new operations at cant deficiencies in excess of 5 inches would present themselves. In any event, there could be a benefit to some operations from the potential enhanced speeds. On the Northeast Corridor, Amtrak has placed values of $2,000,000 annually or more for a reduction of 1 minute in total travel time on the south end of the Northeast Corridor, and in excess of $1,000,000 for such a reduction on the north end of the Northeast Corridor, for its high-speed operations. (*See* "Relative Impacts of On-Time Performance and Travel Time Improvements for Amtrak's Acela Express Service in the NEC," February 18, 2009, AECOM, a copy of which has been placed in the public docket for this rulemaking.) FRA estimates that, initially, high-speed operations on the Northeast Corridor would save 2 minutes of travel time, which coupled with Amtrak's estimate for time savings would translate into a value of $4,000,000 per year. Similarly, other improvements nationwide, such as extension of higher cant deficiency operations already in service in the Northwest, could result in additional savings of $4,000,000 per year after the cost of improving track geometry is considered. For purposes of this analysis, FRA estimates that more operations would take advantage of high cant deficiency possibilities starting in about year 6, and that the value would be an additional $2,000,000 per year in year 6, growing by $2,000,000 per year in years 7 through 20, eventually reaching an annual benefit of $40,000,000 in year 20, for a total discounted benefit of $193,714,398 over 20 years. All of these values are speculative, and based on significant increases in rail passenger transportation. If there is a greater increase in passenger transportation the savings would be greater; if they are not as great, the savings would be lower.

TABLE 2—ESTIMATED HIGH CANT DEFICIENCY BENEFIT

Year	Annual benefit	Discount factor	Annual discounted benefit	Cumulative discounted benefit
1	$8,000,000	0.93	$7,476,636	$7,476,636
2	8,000,000	0.87	6,987,510	14,464,145
3	8,000,000	0.82	6,530,383	20,994,528
4	8,000,000	0.76	6,103,162	27,097,690
5	8,000,000	0.71	5,703,889	32,801,579
6	10,000,000	0.67	6,663,422	39,465,002
7	12,000,000	0.62	7,472,997	46,937,999
8	14,000,000	0.58	8,148,127	55,086,126
9	16,000,000	0.54	8,702,940	63,789,066
10	18,000,000	0.51	9,150,287	72,939,353
11	20,000,000	0.48	9,501,856	82,441,209
12	22,000,000	0.44	9,768,263	92,209,472
13	24,000,000	0.41	9,959,147	102,168,619
14	26,000,000	0.39	10,083,248	112,251,867
15	28,000,000	0.36	10,148,489	122,400,356
16	30,000,000	0.34	10,162,038	132,562,394
17	32,000,000	0.32	10,130,380	142,692,774
18	34,000,000	0.30	10,059,373	152,752,147
19	36,000,000	0.28	9,954,300	162,706,447
20	38,000,000	0.26	9,819,922	172,526,370

Improvements in the use of monitoring equipment and streamlined qualification procedures have the potential to reduce costs, without any offsetting increases. The reduced need for instrumented wheelsets, instrumented cars, and related tests would save roughly $2,000,000 per year on current high-speed operations, and have the potential for similar savings on planned high-speed operations. FRA estimates that two such high-speed operations would be in place starting in year 6, each saving $2,000,000 per year. Further, FRA believes that using MCAT to extend the range of qualified equipment would save an additional $1,500,000 per year in the first five years, and that the savings would grow by $500,000 per year after year 5, as rail passenger transportation expands. MCAT would work to enhance safety, because the equipment would be shown to be safe on minimally compliant track and, as a result, would likely be safe under foreseeable conditions. In the absence of MCAT, the equipment can be qualified on very good track, which might later deteriorate over time. Although accelerometers should provide indications of such deterioration, ensuring that the equipment would be safe on track meeting the geometric limits adds to the life-cycle safety of a trainset. The total savings would grow from $3,500,000 per year in year 1 to $15,000,000 in year 20, for a total savings of $84,997,881 in costs discounted at 7% over 20 years.

TABLE 3—STREAMLINED TESTING REQUIREMENTS—ESTIMATED COST SAVINGS

Year	Annual benefit	Discount factor	Annual discounted benefit	Cumulative discounted benefit
1	$3,500,000	0.93	$3,271,028	$3,271,028
2	3,500,000	0.87	3,057,036	6,328,064
3	3,500,000	0.82	2,857,043	9,185,106
4	3,500,000	0.76	2,670,133	11,855,239
5	3,500,000	0.71	2,495,452	14,350,691
6	8,000,000	0.67	5,330,738	19,681,429
7	8,500,000	0.62	5,293,373	24,974,802
8	9,000,000	0.58	5,238,082	30,212,884
9	9,500,000	0.54	5,167,371	35,380,254
10	10,000,000	0.51	5,083,493	40,463,747
11	10,500,000	0.48	4,988,474	45,452,221
12	11,000,000	0.44	4,884,132	50,336,353
13	11,500,000	0.41	4,772,091	55,108,444
14	12,000,000	0.39	4,653,807	59,762,251
15	12,500,000	0.36	4,530,575	64,292,826
16	13,000,000	0.34	4,403,550	68,696,376
17	13,500,000	0.32	4,273,754	72,970,130
18	14,000,000	0.30	4,142,095	77,112,225
19	14,500,000	0.28	4,009,371	81,121,596
20	15,000,000	0.26	3,876,285	84,997,881

FRA believes that the proposed modifications to the qualifications requirements would have no net impact, as the changes generally codify current interpretations.

The total quantified benefits resulting from this regulatory proposal would range from $11,500,000 in year 1, to $53,000,000 in year 20, with a total, net discounted benefit of $304,298,396 over 20 years at a 7% annual discount rate. Of course, such benefits would depend on much more extensive use of rail passenger transportation, including high-speed rail, as envisioned in current infrastructure improvement and spending plans.

TABLE 4—TOTAL ESTIMATED BENEFITS

Year	Annual benefit	Discount factor	Annual discounted benefit	Cumulative discounted benefit
1	$11,500,000	0.93	$10,747,664	$10,747,664
2	11,500,000	0.87	10,044,545	20,792,209
3	11,500,000	0.82	9,387,426	30,179,635
4	11,500,000	0.76	8,773,295	38,952,929
5	11,500,000	0.71	8,199,341	47,152,271
6	34,000,000	0.67	22,655,636	69,807,906
7	36,500,000	0.62	22,730,366	92,538,272
8	39,000,000	0.58	22,698,355	115,236,627
9	41,500,000	0.54	22,573,250	137,809,877
10	44,000,000	0.51	22,367,369	160,177,246
11	30,500,000	0.48	14,490,330	174,667,576
12	33,000,000	0.44	14,652,395	189,319,971
13	35,500,000	0.41	14,731,238	204,051,209
14	38,000,000	0.39	14,737,055	218,788,264
15	40,500,000	0.36	14,679,064	233,467,328
16	43,000,000	0.34	14,565,588	248,032,915
17	45,500,000	0.32	14,404,135	262,437,050
18	48,000,000	0.30	14,201,468	276,638,518
19	50,500,000	0.28	13,963,671	290,602,189
20	53,000,000	0.26	13,696,207	304,298,396

Additional cost burden associated with information collection is presented in Section C., Paperwork Reduction Act, below. Such impacts would be relatively low compared to the cost savings that would result.

Certain refinements to the testing requirements would yield greater confidence in the test results and thus enhanced safety levels. Such benefits are not readily quantifiable, and FRA has not attempted to quantify them.

In summary, the enhanced safety levels coupled with the cost savings would justify the new cost burden resulting from this proposal. FRA requests comments on all aspects of its economic analysis presented here.

B. Regulatory Flexibility Act and Executive Order 13272

To ensure that the potential impact of this rulemaking on small entities is properly considered, FRA developed this proposed rule in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's policies and procedures to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant economic impact on a substantial number of small entities.

The U.S. Small Business Administration (SBA) stipulates in its "Size Standards" that the largest a railroad business firm that is "for-profit" may be, and still be classified as a "small entity," is 1,500 employees for "Line-Haul Operating Railroads," and 500 employees for "Switching and Terminal Establishments." "Small entity" is defined in the Regulatory Flexibility Act as a small business that is not independently owned and operated, and is not dominant in its field of operation. SBA's "Size Standards" may be altered by Federal agencies after consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy that formally establishes "small entities" as Class III railroads, contractors, and shippers meeting the economic criteria established for Class III railroads in 49 CFR 1201.1–1, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. No shippers, contractors, or small governmental jurisdictions would be impacted by this proposal. At present there are no small entity commuter railroads, and FRA believes that were such a small commuter railroad to commence operations, it is extremely unlikely that it would engage in high cant deficiency operations because such operations require relatively expensive rolling equipment capable of tilting to give a safe and comfortable ride to passengers.

The Class III revenue requirement is currently $20 million or less in annual operating revenue. The $20 million limit (which is adjusted by applying the railroad revenue deflator adjustment) is based on the Surface Transportation Board's (STB) threshold for a Class III railroad carrier. FRA uses the same revenue dollar limit to determine whether a railroad or shipper or contractor is a small entity. At present, no small entities would be affected by either the high-speed provisions or the high cant deficiency provisions. To the extent that new passenger railroads are small entities, and want to take advantage of high cant deficiency operations and have the means to do so, they would benefit. Small freight railroads hosting passenger operations could recoup any costs of maintaining infrastructure, through trackage agreements which enable host railroads to recover marginal costs of permitting passenger operations over their tracks, to accommodate high cant deficiency operations, or could refuse to host such high cant deficiency operations, as appropriate. Nonetheless, FRA does not foresee any situation under which a small entity might be impacted by the high speed provisions in this proposal.

Based on these determinations, FRA certifies that it expects that, as a result of this rulemaking, there will be no significant impact on a substantial number of small entities. FRA requests comments on both this analysis and this certification.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The sections that contain both proposed and current information collection requirements, and the estimated time to fulfill those requirements, are summarized in the following table.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
213.4—Excepted Track:				
—Designation of track as excepted	200 railroads	20 orders	15 minutes	5
—Notification to FRA about removal of excepted track.	200 railroads	15 notification	10 minutes	3
213.5—Responsibility for Compliance	728 railroads	10 notification	8 hours	80
213.7—Designation of Qualified Persons to Supervise Certain Renewals and Inspect Track:				
—Designations	728 railroads	1,500 names	10 minutes	250
—Employees trained in CWR procedures	31 railroads	80,000 employees	90 minutes	120,000
—Written authorizations and recorded exams.	31 railroads	80,000 authorizations + 80,000 exams.	10 minutes + 60 minutes.	93,333
—Designations (partially qualified) under paragraph (d) of this section.	31 railroads	250 names	10 minutes	42
213.17—Waivers	728 railroads	6 petitions	24 hours	144
213.57—Curves; Elevation and Speed Limitations:				
—Request to FRA for vehicle type approval	728 railroads	2 requests/documents	40 hours	80
—Notification to FRA prior to implementation of higher curving speeds.	728 railroads	2 notifications	45 minutes	2
—Railroad notification to FRA of providing commuter/passenger service over trackage of more than 1 track owner with same vehicle type.	728 railroads	2 notifications	45 minutes	2

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Written consent of other affected track owners by railroad.	728 railroads	2 consents	8 hours	16
213.110— Gage Restraint Measurement Systems (GRMS):				
—Implementing GRMS—notices and reports.	728 railroads	5 notifications + 1 technical report.	45 minutes/4 hours	8
—GRMS vehicle output reports	728 railroads	50 reports	5 minutes	4
—GRMS vehicle exception reports	728 railroads	50 reports	5 minutes	4
—GRMS/PTLF procedures for data integrity	728 railroads	4 procedure documents	2 hours	8
—GRMS training programs/sessions	728 railroads	2 programs + 5 sessions.	16 hours	112
—GRMS inspection records	728 railroads	50 records	2 hours	100
213.118—Continuous Welded Rail (CWR); Plan Review and Approval:				
—Plans	728 railroads	728 reviewed plans	4 hours	2,912
—Notification to FRA and employees of plan effective date.	728 railroads	728 notifications + 80,000 notifications.	15 minutes + 2 minutes	2,849
—Written submissions in support of plan	728 railroads	20 submissions	2 hours	40
—FRA-required revisions to CWR plan	728 railroads	20 reviewed plans	1 hour	20
213.119—Continuous Welded rail (CWR), Plan Contents:				
—Fracture report for each broken CWR joint bar.	239 railroads/1 association.	12,000 reports	10 minutes	2,000
—Petition for technical conference on fracture reports.	1 association	1 petition	15 minutes	.25
—Training programs on CWR procedures	239 railroads/1 association.	240 amended programs.	1 hour	240
—Annual CWR training of employees	31 railroads	80,000 employees	30 minutes	40,000
—Recordkeeping (track with CWR)	239 railroads	2,000 records	10 minutes	333
—Recordkeeping for CWR rail joints	239 railroads	360,000 records	2 minutes	12,000
—Periodic records for CWR rail joints	239 railroads	480,000 records	1 minute	8,000
—Copy of track owner's CWR procedures	728 railroads	239 manuals	10 minutes	40
213.233—Track Inspections:				
—Notations	728 railroads	12,500 notations	1 minute	208
213.241—Inspection Records	728 railroads	1,542,089 records	Varies	1,672,941
213.303—Responsibility for Compliance	2 railroads	1 petition	8 hours	8
213.305—Designation of Qualified Individuals; General Qualifications:				
—Designations	2 railroads	150 designations	10 minutes	25
—Designations (partially qualified) under paragraph (d) of this section.	2 railroads	20 designations	10 minutes	3
213.317—Waivers	2 railroads	1 petition	80 hours	80
213.329— Curves, Elevation and Speed Limitations:				
—FRA approval of qualified vehicle types based on results of testing.	728 railroads	2 documents	40 hours	80
—Written notification to FRA 30 days prior to implementation of higher curving speeds.	728 railroads	2 notifications	45 minutes	2
—Written notification to FRA by railroad providing commuter/passenger Service over trackage of more than 1 track owner with same vehicle type.	728 railroads	2 notifications	45 minutes	2
—Written consent of other affected track owners by railroad.	728 railroads	2 consents	8 hours	16
213.333—Automated Vehicle Inspection Systems:				
—Track Geometry Measurement System (TGMS): reports.	10 railroads	18 reports	30 hours	540
—TGMS: copies of most recent exception printouts.	10 railroads	13 printouts	20 hours	260
—Notification to track personnel when onboard accelerometers indicate track-related problem (new requirement).	10 railroads	5 notifications	40 hours	200
—Requests for an alternate location for device measuring lateral accelerations (new requirement).	10 railroads	10 requests	40 hours	400
—Report to FRA providing analysis of collected monitoring data (new requirement).	10 railroads	2,080 reports	6 hours	12,480
213.341—Initial Inspection of New Rail and Welds:				
—Mill inspection—copy of manufacturer's report.	2 railroads	2 reports	16 hours	32

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Welding plan inspection report	2 railroads	2 reports	16 hours	32
—Inspection of field welds	2 railroads	125 records	20 minutes	42
213.343—Continuous Welded Rail (CWR):				
—Recordkeeping	2 railroads	150 records	10 minutes	25
213.345—Vehicle/Track System Qualification:				
—Qualification program for all vehicle types operating at track Class 6 speeds or above or at curving speeds above 5 inches of cant deficiency (new requirement).	10 railroads	10 programs	120 hours	1,200
—Qualification program for previously qualified vehicle types (new requirement).	10 railroads	10 programs	80 hours	800
213.347—Automotive or Railroad Crossings at Grade:				
—Protection plans	1 railroad	2 plans	8 hours	16
213.369—Inspection Records:				
—Record of inspection of track	2 railroads	500 records	1 minute	8
—Internal defect inspections and remedial action taken.	2 railroads	50 records	5 minutes	4
Appendix D—Minimally Compliant Analytical Track (MCAT) Simulations Used for Qualifying Vehicles to Operate at High Speeds and at High Cant Deficiencies:				
—Identification of non-redundant suspension system element or component that may present a single point of failure (new requirement).	10 railroads	20 identified elements/ components.	160 hours	3,200

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, Federal Railroad Administration, at 202–493–6292, or Ms. Kimberly Toone, Information Clearance Officer, Federal Railroad Administration, at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Third Floor, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan or Ms. Toone at the following, respective addresses: *Robert.Brogan@dot.gov,* or *Kimberly.Toone@dot.gov.* Copies of such comments may also be submitted to OMB at the Office of Management and Budget, 725 17th St., NW., Washington, DC 20590, Attn: FRA OMB Desk Officer, or via e-mail at *oira_submissions@omb.eop.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if received within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, "Federalism" (*see* 64 FR 43255 (Aug. 10, 1999)). Executive Order 13132 requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has determined that this regulatory action will not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the

distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this regulatory action would not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, the final rule arising from this regulatory action would have preemptive effect. Section 20106 of title 49, United States Code, (Section 20106) provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the "essentially local safety or security hazard" exception to Section 20106. The intent of Section 20106 is to promote national uniformity in railroad safety and security standards. 49 U.S.C. 20106(a)(1). Thus, subject to a limited exception for essentially local safety or security hazards, the final rule arising from this rulemaking would establish a uniform Federal safety standard that must be met, and State requirements covering the same subject matter are displaced, whether those State requirements are in the form of a State law (including common law), regulation, or order.

While the final rule arising from this rulemaking would establish Federal standards of care which preempt State standards of care, the final rule would not preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with the Federal standard of care established by this rulemaking, including a plan or program required by this rulemaking. Provisions of a plan or program which exceed the requirements of this rulemaking are not included in the Federal standard of care.

FRA does note that under 49 U.S.C. 20701–20703 (formerly the Locomotive (Boiler) Inspection Act) (LBIA), the field of locomotive safety is preempted, extending to the design, the construction, and the material of every part of the locomotive and tender and all appurtenances thereof. To the extent that this rulemaking establishes requirements affecting locomotive safety, the scope of preemption is provided by 49 U.S.C. 20701–20703.

In sum, FRA has analyzed this regulatory action in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this regulatory action has no federalism implications, other than the preemption of State laws covering the subject matter of this rulemaking, which occurs by operation of law under 49 U.S.C. 20106 whenever FRA issues a rule or order, and under the LBIA (49 U.S.C. 20701–20703) by its terms. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

E. Environmental Impact

FRA has evaluated this NPRM in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (*see* 64 FR 28545 (May 26, 1999)) as required by the National Environmental Policy Act (*see* 42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this action is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547 (May 26, 1999). In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this NPRM that might trigger the need for a more detailed environmental review. As a result, FRA finds that this NPRM is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and Tribal governments and the private sector. The proposed rule will not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." *See* 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of the Executive Order.

H. Trade Impact

The Trade Agreements Act of 1979 (Pub. L. 96–39, 19 U.S.C. 2501 *et seq.*) prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

FRA has assessed the potential effect of this rulemaking on foreign commerce and believes that the proposed requirements are consistent with the Trade Agreements Act. The requirements proposed are safety standards, which, as noted, are not considered unnecessary obstacles to trade. Moreover, FRA has sought, to the extent practicable, to state the requirements in terms of the

performance desired, rather than in more narrow terms restricted to a particular vehicle design, so as not to limit different, compliant designs by any manufacturer—foreign or domestic. FRA has also taken into consideration of international standards for the safe interaction of vehicles and the track over which they operate, such as standards for steady-state, lateral acceleration of passenger carbodies.

I. Privacy Act

Anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

List of Subjects

49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Passenger equipment, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend parts 213 and 238 of chapter II, subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 213—[AMENDED]

1. The authority citation for part 213 is revised to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Subpart A—General

2. Section 213.7 is amended by revising paragraphs (a)(2)(i) and (b)(2)(i) to read as follows:

§ 213.7 Designation of qualified persons to supervise certain renewals and inspect track.

(a) * * *

(2) * * *

(i) Knows and understands the requirements of this part that apply to the restoration and renewal of the track for which he or she is responsible;

* * * * *

(b) * * *

(2) * * *

(i) Knows and understands the requirements of this part that apply to the inspection of the track for which he or she is responsible;

* * * * *

Subpart C—Track Geometry

3. Section 213.55 is revised to read as follows:

§ 213.55 Track alinement.

(a) Except as provided in paragraph (b) of this section, alinement may not deviate from uniformity more than the amount prescribed in the following table:

Class of track	Tangent track	Curved track	
	The deviation of the mid-offset from a 62-foot line[1] may not be more than—(inches)	The deviation of the mid-ordinate from a 31-foot chord[2] may not be more than—(inches)	The deviation of the mid-ordinate from a 62-foot chord[2] may not be more than— (inches)
Class 1 track	5	[3]N/A	5
Class 2 track	3	[3]N/A	3
Class 3 track	1¾	1¼	1¾
Class 4 track	1½	1	1½
Class 5 track	¾	½	⅝

[1] The ends of the line shall be at points on the gage side of the line rail, five-eighths of an inch below the top of the railhead. Either rail may be used as the line rail; however, the same rail shall be used for the full length of that tangential segment of the track.
[2] The ends of the chord shall be at points on the gage side of the outer rail, five-eighths of an inch below the top of the railhead.
[3] N/A—Not Applicable.

(b) For operations at a qualified cant deficiency, E_u, of more than 5 inches, the alinement of the outside rail of the curve may not deviate from uniformity more than the amount prescribed in the following table:

Class of track	Curved track[5]	
	The deviation of the mid-ordinate from a 31-foot chord[2] may not be more than—(inches)	The deviation of the mid-ordinate from a 62-foot chord[2] may not be more than—(inches)
Class 1 track[4]	[3]N/A	1¼
Class 2 track[4]	[3]N/A	1¼
Class 3 track	¾	1¼
Class 4 track	¾	⅞
Class 5 track	½	⅝

[4] Restraining rails or other systems may be required for derailment prevention.
[5] Curved track limits shall be applied only when track curvature is greater than 0.25 degree.

4. Section 213.57 is revised to read as follows:

§ 213.57 Curves; elevation and speed limitations.

(a) The maximum elevation of the outside rail of a curve may not be more than 8 inches on track Classes 1 and 2, and 7 inches on track Classes 3 through 5. The outside rail of a curve may not be lower than the inside rail, except as a result of a deviation as per § 213.63.

(b) All vehicle types requiring qualification under § 213.345 must demonstrate that when stopped on a curve having a maximum uniform elevation of 7 inches, no wheel unloads to a value less than 50 percent of its static weight on level track.

(c) The maximum posted timetable operating speed for each curve is determined by the following formula—

$$V_{max} = \sqrt{\frac{E_a + E_u}{0.0007D}}$$

Where:

V_{max} = Maximum posted timetable operating speed (m.p.h.).

E_a = Actual elevation of the outside rail (inches).[1]

E_u = Qualified cant deficiency[2] (inches) of the vehicle type.

D = Degree of curvature (degrees).[3]

(d) All vehicles are considered qualified for operating on track with a cant deficiency, E_u, not exceeding 3 inches. Table 1 of appendix A to this part is a table of speeds computed in accordance with the formula in paragraph (c) of this section, when E_u equals 3 inches, for various elevations and degrees of curvature.

(e) Each vehicle type must be approved by FRA to operate on track with a qualified cant deficiency, E_u, greater than 3 inches. Each vehicle type must demonstrate compliance with the requirements of either paragraph (e)(1) or (e)(2) of this section.

(1) When positioned on track with a uniform superelevation equal to the proposed cant deficiency:

(i) No wheel of the vehicle unloads to a value less than 60 percent of its static value on perfectly level track; and

(ii) For passenger cars, the roll angle between the floor of the equipment and the horizontal does not exceed 8.6 degrees; or

(2) When operating through a constant radius curve at a constant speed corresponding to the proposed cant deficiency, and if a test plan is submitted and approved by FRA in accordance with § 213.345 (e) and (f):

(i) The steady-state (average) load on any wheel, throughout the body of the curve, is not less than 60 percent of its static value on perfectly level track; and

(ii) For passenger cars, the steady-state (average) lateral acceleration measured on the floor of the carbody does not exceed 0.15g.

(f) The track owner or railroad shall transmit the results of the testing specified in paragraph (e) of this section to FRA requesting approval for the vehicle type to operate at the desired speeds allowed under the formula in paragraph (c) of this section. The request shall be in writing and shall contain, at a minimum, the following information—

(1) A description of the vehicle type involved, including schematic diagrams of the suspension system(s) and the estimated location of the center of gravity above top of rail;

(2) The test procedure[4] and description of the instrumentation used to qualify the vehicle and the maximum values for wheel unloading and roll angles or accelerations that were observed during testing; and

(3) For vehicle types not subject to parts 229 or 238 of this chapter, procedures or standards in effect that relate to the maintenance of all safety-critical components of the suspension system(s) for the particular vehicle type. Safety-critical components of the suspension system are those that impact or have significant influence on the roll of the carbody and the distribution of weights on the wheels.

(g) Upon FRA approval of the request, the track owner or railroad shall notify FRA's Associate Administrator for Railroad Safety/Chief Safety Officer in writing no less than 30 calendar days prior to the proposed implementation of the approved higher curving speeds allowed under the formula in paragraph (c) of this section. The notification shall contain, at a minimum, identification of the track segment(s) on which the higher curving speeds are to be implemented. In approving the request in paragraph (f) of this section, FRA may impose conditions necessary for safely operating at the higher curving speeds.

(h) A track owner or railroad that provides passenger or commuter service over trackage of more than one track owner with the same vehicle type may provide written notification to the FRA with the written consent of the other affected track owners.

(i) For vehicle types intended to operate at any curving speed producing more than 5 inches of cant deficiency, the following provisions of subpart G of this part shall apply: §§ 213.333(a) through (g), (j)(1), (k) and (m), 213.345, and 213.369(f).

(j) Vehicle types that have been permitted by FRA to operate at cant deficiencies, E_u, greater than 3 inches prior to [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], shall be considered qualified under this section to operate at those permitted cant deficiencies over the previously operated track segment(s).

(k) As used in this section—

(1) *Vehicle* means a locomotive, as defined in § 229.5 of this part; a freight car, as defined in § 215.5 of this part; a passenger car, as defined in § 238.5 of this part; and any rail rolling equipment used in a train with either a freight car or a passenger car.

(2) *Vehicle type* means vehicles with variations in their physical properties, such as suspension, mass, interior arrangements, and dimensions that do not result in significant changes to their dynamic characteristics.

5. Section 213.63 is revised to read as follows:

§ 213.63 Track surface.

(a) Except as provided in paragraph (b) of this section, each track owner shall maintain the surface of its track within the limits prescribed in the following table:

Track surface (inches)	Class of track				
	1	2	3	4	5
The runoff in any 31 feet of rail at the end of a raise may not be more than ..	3½	3	2	1½	1
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than	3	2¾	2¼	2	1¼

[1] Actual elevation, E_a, for each 155-foot track segment in the body of the curve is determined by averaging the elevation for 11 points through the segment at 15.5-foot spacing. If the curve length is less than 155 feet, average the points through the full length of the body of the curve.

[2] If the actual elevation, E_a, and degree of curvature, D, change as a result of track degradation, then the actual cant deficiency for the maximum posted timetable operating speed, V_{max}, may be greater than the qualified cant deficiency, E_u. This actual cant deficiency for each curve may not exceed the qualified cant deficiency, E_u, plus 1 inch.

[3] Degree of curvature, D, is determined by averaging the degree of curvature over the same track segment as the elevation.

[4] The test procedure may be conducted whereby all the wheels on one side (right or left) of the vehicle are raised to the proposed cant deficiency and lowered, and then the vertical wheel loads under each wheel are measured and a level is used to record the angle through which the floor of the vehicle has been rotated.

Track surface (inches)	Class of track				
	1	2	3	4	5
The deviation from zero crosslevel at any point on tangent or reverse crosslevel elevation on curves may not be more than	3	2	1¾	1¼	1
The difference in crosslevel between any two points less than 62 feet apart may not be more than*[1] [2]	3	2¼	2	1¾	1½
*Where determined by engineering decision prior to June 22, 1998, due to physical restrictions on spiral length and operating practices and experience, the variation in crosslevel on spirals per 31 feet may not be more than	2	1¾	1¼	1	¾

[1] Except as limited by § 213.57(a), where the elevation at any point in a curve equals or exceeds 6 inches, the difference in crosslevel within 62 feet between that point and a point with greater elevation may not be more than 1½ inches.

[2] However, to control harmonics on Class 2 through 5 jointed track with staggered joints, the crosslevel differences shall not exceed 1¼ inches in all of six consecutive pairs of joints, as created by seven low joints. Track with joints staggered less than 10 feet apart shall not be considered as having staggered joints. Joints within the seven low joints outside of the regular joint spacing shall not be considered as joints for purposes of this footnote.

(b) For operations at a qualified cant deficiency, E_u, of more than 5 inches, each track owner shall maintain the surface of the curve within the limits prescribed in the following table:

Track surface[4] (inches)	Class of track				
	1	2	3	4	5
The deviation from uniform profile on either rail at the mid-ordinate of a 31-foot chord may not be more than	N/A[3]	N/A[3]	1	1	1
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than	2¼	2¼	1¾	1¼	1
The difference in crosslevel between any two points less than 10 feet apart (short warp) shall not be more than	2	2	1¾	1¾	1½

[3] N/A—Not Applicable.

[4] Curved track surface limits shall be applied only when track curvature is greater than 0.25 degree.

6. Section 213.65 is added to read as follows:

§ 213.65 Combined alinement and surface deviations.

On any curved track where operations are conducted at a qualified cant deficiency, E_u, greater than 5 inches, the combination of alinement and surface deviations for the same chord length on the outside rail in the curve, as measured by a TGMS, shall comply with the following formula:

$$\frac{3}{4} \times \left| \frac{A_m}{A_L} + \frac{S_m}{S_L} \right| \leq 1$$

Where:

A_m = measured alinement deviation from uniformity (outward is positive, inward is negative).

A_L = allowable alinement limit as per § 213.55(b) (always positive) for the class of track.

S_m = measured profile deviation from uniformity (down is positive, up is negative).

S_L = allowable profile limit as per § 213.63(b) (always positive) for the class of track.

$$\left| \frac{A_m}{A_L} + \frac{S_m}{S_L} \right| = \text{the absolute (positive) value of the result of } \frac{A_m}{A_L} + \frac{S_m}{S_L}.$$

7. Section 213.110 is amended by revising paragraphs (c) through (f), (l), (p)(2) and (p)(3) to read as follows:

§ 213.110 Gage restraint measurement systems.

* * * * *

(c)(1) The track owner shall also provide to FRA sufficient technical data to establish compliance with the following minimum design requirements of a GRMS vehicle:

(2) Gage restraint shall be measured between the heads of rail—

(i) At an interval not exceeding 16 inches;

(ii) Under an applied vertical load of no less than 10 kips per rail; and

(iii) Under an applied lateral load that provides for a lateral/vertical load ratio of between 0.5 and 1.25[5], and a load severity greater than 3 kips but less than 8 kips per rail.

(d) Load severity is defined by the formula:

$$S = L - cV$$

Where:

S = Load severity, defined as the lateral load applied to the fastener system (kips).

L = Actual lateral load applied (kips).

c = Coefficient of friction between rail/tie, which is assigned a nominal value of 0.4.

V = Actual vertical load applied (kips), or static vertical wheel load if vertical load is not measured.

(e) The measured gage values shall be converted to a Projected Loaded Gage 24 (PLG24) as follows—

$$PLG24 = UTG + A \times (LTG - UTG)$$

Where:

UTG = Unloaded track gage measured by the GRMS vehicle at a point no less than 10 feet from any lateral or vertical load application.

[5] GRMS equipment using load combinations developing L/V ratios that exceed 0.8 shall be operated with caution to protect against the risk of wheel climb by the test wheelset.

LTG = Loaded track gage measured by the GRMS vehicle at a point no more than 12 inches from the lateral load application point.

A = The extrapolation factor used to convert the measured loaded gage to expected loaded gage under a 24,000-pound lateral load and a 33,000-pound vertical load.

For all track—

$$A = \frac{13.513}{(.001 \times L - .000258 \times V) - .009 \times (.001 \times L - .000258 \times V)^2}$$

Note: The A factor shall not exceed a value of 3.184 under any valid loading configuration.

Where:

L = Actual lateral load applied (kips).

V = Actual vertical load applied (kips), or static vertical wheel load if vertical load is not measured.

(f) The measured gage and load values shall be converted to a Gage Widening Projection (GWP) as follows:

$$GWP = (LTG - UTG) \times \frac{8.26}{L - 0.258 \times V}$$

* * * * *

(l) The GRMS record of lateral restraint shall identify two exception levels. At a minimum, the track owner shall initiate the required remedial action at each exception level as defined in the following table—

GRMS parameters [1]	If measurement value exceeds	Remedial action required
First Level Exception		
UTG	58 inches	(1) Immediately protect the exception location with a 10 m.p.h. speed restriction, then verify location; (2) Restore lateral restraint and maintain in compliance with PTLF criteria as described in paragraph (m) of this section; and (3) Maintain compliance with § 213.53(b) as measured with the PTLF.
LTG	58 inches.	
PLG24	59 inches.	
GWP	1.0 inch.	
Second Level Exception		
LTG	57¾ inches on Class 4 and 5 track [2].	(1) Limit operating speed to no more than the maximum allowable under § 213.9 for Class 3 track, then verify location; (2) Maintain in compliance with PTLF criteria as described in paragraph (m) of this section; and (3) Maintain compliance with § 213.53(b) as measured with the PTLF.
PLG24	58 inches	
GWP	0.75 inch.	

[1] Definitions for the GRMS parameters referenced in this table are found in paragraph (p) of this section.

[2] This note recognizes that typical good track will increase in total gage by as much as one-quarter of an inch due to outward rail rotation under GRMS loading conditions. For Class 2 and 3 track, the GRMS LTG values are also increased by one-quarter of an inch to a maximum of 58 inches. However, for any class of track, GRMS LTG values in excess of 58 inches are considered First Level exceptions and the appropriate remedial actions must be taken by the track owner. This one-quarter-inch increase in allowable gage applies only to GRMS LTG. For gage measured by traditional methods, or with the use of the PTLF, the table in § 213.53(b) applies.

* * * * *

(p) * * *

(2) *Gage Widening Projection (GWP)* means the measured gage widening, which is the difference between loaded and unloaded gage, at the applied loads, projected to reference loads of 16,000 pounds of lateral force and 33,000 pounds of vertical force.

(3) *L/V ratio* means the numerical ratio of lateral load applied at a point on the rail to the vertical load applied at that same point. GRMS design requirements specify an L/V ratio of between 0.5 and 1.25.

* * * * *

Subpart G—Train Operations at Track Classes 6 and Higher

8. Section 213.305 is amended by revising paragraphs (a)(2)(i) and (b)(2)(i) to read as follows:

§ 213.305 Designation of qualified individuals; general qualifications.

* * * * *

(a) * * *

(2) * * *

(i) Knows and understands the requirements of this subpart that apply to the restoration and renewal of the track for which he or she is responsible;

* * * * *

(b) * * *

(2) * * *

(i) Knows and understands the requirements of this subpart that apply to the inspection of the track for which he or she is responsible.

* * * * *

9. Section 213.307 is amended by revising the section heading and paragraph (a) to read as follows:

§ 213.307 Classes of track: Operating speed limits.

(a) Except as provided in paragraph (b) of this section and as otherwise provided in this subpart G, the following maximum allowable speeds apply:

Over track that meets all of the requirements prescribed in this subpart for—	The maximum allowable operating speed for trains is [1]
Class 6 track	110 m.p.h.

Over track that meets all of the requirements prescribed in this subpart for—	The maximum allowable operating speed for trains is [1]
Class 7 track	125 m.p.h.
Class 8 track	160 m.p.h.[2]
Class 9 track	220 m.p.h.[2]

[1] Freight may be transported at passenger train speeds if the following conditions are met:

(1) The vehicles utilized to carry such freight are of equal dynamic performance and have been qualified in accordance with § 213.329 and § 213.345.

(2) The load distribution and securement in the freight vehicle will not adversely affect the dynamic performance of the vehicle. The axle loading pattern is uniform and does not exceed the passenger locomotive axle loadings utilized in passenger service operating at the same maximum speed.

(3) No carrier may accept or transport a hazardous material, as defined at 49 CFR 171.8, except as provided in Column 9A of the Hazardous Materials Table (49 CFR 172.101) for movement in the same train as a passenger-carrying vehicle or in Column 9B of the Table for movement in a train with no passenger-carrying vehicles.

[2] Operating speeds in excess of 150 m.p.h. are authorized by this part only in conjunction with a rule of particular applicability addressing other safety issues presented by the system.

* * * * *

10. Section 213.323 is amended by revising paragraph (b) to read as follows:

§ 213.323 Track gage.

* * * * *

(b) Gage shall be within the limits prescribed in the following table:

Class of track	The gage must be at least—	But not more than—	The change of gage within 31 feet must not be greater than—
Class 6 track	4′8″	4′9¼″	¾″
Class 7 track	4′8″	4′9¼″	½″
Class 8 track	4′8″	4′9¼″	½″
Class 9 track	4′8¼″	4′9¼″	½″

11. Section 213.327 is revised to read as follows:

§ 213.327 Track alinement.

(a) Uniformity at any point along the track is established by averaging the measured mid-chord offset values for nine consecutive points that are centered around that point and spaced according to the following table:

Chord length	Spacing
31′	7′9″
62′	15′6″
124′	31′0″

(b) Except as provided in paragraph (c) of this section, a single alinement deviation from uniformity may not be more than the amount prescribed in the following table:

Class of track	Tangent/curved track	The deviation from uniformity of the mid-chord offset for a 31-foot chord may not be more than—(inches)	The deviation from uniformity of the mid-chord offset for a 62-foot chord may not be more than—(inches)	The deviation from uniformity of the mid-chord offset for a 124-foot chord may not be more than—(inches)
Class 6 track	Tangent	½	¾	1½
	Curved [1]		⅝	
Class 7 track	Tangent	½	¾	1¼
	Curved [1]		½	
Class 8 track	Tangent	½	¾	1
	Curved [1]		½	¾
Class 9 track	Tangent	½	½	¾
	Curved [1].			

[1] Curved track limits shall be applied only when track curvature is greater than 0.25 degree. Track curvature may be established at any point by averaging the measured 62-foot chord offset values for nine consecutive points that are centered around that point and spaced at 15 feet 6 inches.

(c) For operations at a qualified cant deficiency, E_u, of more than 5 inches, a single alinement deviation from uniformity of the outside rail of the curve may not be more than the amount prescribed in the following table:

Class of track	Track type	The deviation from uniformity of the mid-chord offset for a 31-foot chord may not be more than—(inches)	The deviation from uniformity of the mid-chord offset for a 62-foot chord may not be more than—(inches)	The deviation from uniformity of the mid-chord offset for a 124-foot chord may not be more than—(inches)
Class 6 track	Curved [1]	½	⅝	1¼
Class 7 track	Curved [1]	½	½	1
Class 8 track	Curved [1]	½	½	¾

Class of track	Track type	The deviation from uniformity of the mid-chord offset for a 31-foot chord may not be more than—(inches)	The deviation from uniformity of the mid-chord offset for a 62-foot chord may not be more than—(inches)	The deviation from uniformity of the mid-chord offset for a 124-foot chord may not be more than—(inches)
Class 9 track	Curved [1]	½	½	¾

[1] Curved track limits shall be applied only when track curvature is greater than 0.25 degree.

(d) For three or more non-overlapping deviations from uniformity in track alinement occurring within a distance equal to five times the specified chord length, each of which exceeds the limits in the following table, each track owner shall maintain the alinement of the track within the limits prescribed for each deviation:

Class of track	The deviation from uniformity of the mid-chord offset for a 31-foot chord may not be more than—(inches)	The deviation from uniformity of the mid-chord offset for a 62-foot chord may not be more than—(inches)	The deviation from uniformity of the mid-chord offset for a 124-foot chord may not be more than—(inches)
Class 6 track	⅜	½	1
Class 7 track	⅜	⅜	⅞
Class 8 track	⅜	⅜	½
Class 9 track	⅜	⅜	½

(e) For purposes of complying with this section, the ends of the chord shall be at points on the gage side of the rail, five-eighths of an inch below the top of the railhead. On tangent track, either rail may be used as the line rail; however, the same rail shall be used for the full length of that tangential segment of the track. On curved track, the line rail is the outside rail of the curve.

12. Section 213.329 is revised to read as follows:

§ 213.329 Curves; elevation and speed limitations.

(a) The maximum elevation of the outside rail of a curve may not be more than 7 inches. The outside rail of a curve may not be lower than the inside rail, except as a result of a deviation as per § 213.331.

(b) All vehicle types requiring qualification under § 213.345 must demonstrate that when stopped on a curve having a maximum uniform elevation of 7 inches, no wheel unloads to a value less than 50 percent of its static weight on level track.

(c) The maximum posted timetable operating speed for each curve is determined by the following formula:

$$V_{max} = \sqrt{\frac{E_a + E_u}{0.0007D}}$$

Where:

V_{max} = Maximum posted timetable operating speed (m.p.h.).

E_a = Actual elevation of the outside rail (inches).[6]

E_u = Qualified cant deficiency [7] (inches) of the vehicle type.

D = Degree of curvature (degrees).[8]

(d) All vehicles are considered qualified for operating on track with a cant deficiency, E_u, not exceeding 3 inches. Table 1 of appendix A to this part is a table of speeds computed in accordance with the formula in paragraph (c) of this section, when E_u equals 3 inches, for various elevations and degrees of curvature.

(e) Each vehicle type must be approved by FRA to operate on track with a qualified cant deficiency, E_u, greater than 3 inches. Each vehicle type must demonstrate compliance with the requirements of either paragraph (e)(1) or (e)(2) of this section.

(1) When positioned on a track with a uniform superelevation equal to the proposed cant deficiency:

(i) No wheel of the vehicle unloads to a value less than 60 percent of its static value on perfectly level track; and

(ii) For passenger cars, the roll angle between the floor of the equipment and the horizontal does not exceed 8.6 degrees; or

(2) When operating through a constant radius curve at a constant speed corresponding to the proposed cant deficiency, and a test plan is submitted and approved by FRA in accordance with § 213.345(e) and (f):

(ii) The steady-state (average) load on any wheel, throughout the body of the curve, is not to be less than 60 percent of its static value on perfectly level track; and

(iii) For passenger cars, the steady-state (average) lateral acceleration measured on the floor of the carbody does not exceed 0.15g.

(f) The track owner or railroad shall transmit the results of the testing specified in paragraph (e) of this section to FRA requesting approval for the vehicle type to operate at the desired speeds allowed under the formula in paragraph (c) of this section. The request shall be in writing and shall contain, at a minimum, the following information—

(1) A description of the vehicle type involved, including schematic diagrams of the suspension system(s) and the estimated location of the center of gravity above top of rail;

(2) The test procedure [9] and description of the instrumentation used to qualify the vehicle and the maximum values for wheel unloading and roll angles or accelerations that were observed during testing; and

(3) For vehicle types not subject to part 238 or part 229 of this chapter, procedures or standards in effect that relate to the maintenance of all safety-critical components of the suspension system(s) for the particular vehicle type.

[6] Actual elevation, E_a, for each 155-foot track segment in the body of the curve is determined by averaging the elevation for 11 points through the segment at 15.5-foot spacing. If the curve length is less than 155 feet, average the points through the full length of the body of the curve.

[7] If the actual elevation, E_a, and degree of curvature, D, change as a result of track degradation, then the actual cant deficiency for the maximum posted timetable operating speed, Vmax, may be greater than the qualified cant deficiency, E_u. This actual cant deficiency for each curve may not exceed the qualified cant deficiency, E_u, plus one-half inch.

[8] Degree of curvature, D, is determined by averaging the degree of curvature over the same track segment as the elevation.

[9] The test procedure may be conducted whereby all the wheels on one side (right or left) of the vehicle are raised to the proposed cant deficiency and lowered, and then the vertical wheel loads under each wheel are measured and a level is used to record the angle through which the floor of the vehicle has been rotated.

Safety-critical components of the suspension system are those that impact or have significant influence on the roll of the carbody and the distribution of weights on the wheels.

(g) Upon FRA approval of the request, the track owner or railroad shall notify FRA's Associate Administrator for Railroad Safety/Chief Safety Officer in writing no less than 30 calendar days prior to the proposed implementation of the approved higher curving speeds allowed under the formula in paragraph (c) of this section. The notification shall contain, at a minimum, identification of the track segment(s) on which the higher curving speeds are to be implemented. In approving the request in paragraph (f) of this section, FRA may impose conditions necessary for safely operating at the higher curving speeds.

(h) A track owner or railroad that provides passenger or commuter service over trackage of more than one track owner with the same vehicle type may provide written notification to FRA with the written consent of the other affected track owners.

(i) Vehicle types that have been permitted by FRA to operate at cant deficiencies, E_u, shall be considered qualified under this section to operate at those permitted cant deficiencies over the previously operated track segment(s).

(j) As used in this section and in §§ 213.333 and 213.345—

(1) *Vehicle* means a locomotive, as defined in § 229.5 of this part; a freight car, as defined in § 215.5 of this part; a passenger car, as defined in § 238.5 of this part; and any rail rolling equipment used in a train with either a freight car or a passenger car.

(2) *Vehicle type* means vehicles with variations in their physical properties, such as suspension, mass, interior arrangements, and dimensions that do not result in significant changes to their dynamic characteristics.

13. Section 213.331 is revised to read as follows:

§ 213.331 Track surface.

(a) For a single deviation in track surface, each track owner shall maintain the surface of its track within the limits prescribed in the following table:

Track surface (inches)	Class of track			
	6	7	8	9
The deviation from uniform [1] profile on either rail at the mid-ordinate of a 31-foot chord may not be more than	1	1	¾	½
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than	1	1	1	¾
Except as provided in paragraph (b) of this section, the deviation from uniform profile on either rail at the mid-ordinate of a 124-foot chord may not be more than	1¾	1½	1¼	1
The deviation from zero crosslevel at any point on tangent track may not be more than	1	1	1	1
Reverse elevation on curves [3] may not be more than	½	½	½	½
The difference in crosslevel between any two points less than 62 feet apart may not be more than [2]	1½	1½	1¼	1
On curved track,[3] the difference in crosslevel between any two points less than 10 feet apart (short warp) may not be more than	1¼	1⅛	1	¾

[1] Uniformity for profile is established by placing the midpoint of the specified chord at the point of maximum measurement.
[2] However, to control harmonics on jointed track with staggered joints, the crosslevel differences shall not exceed 1 inch in all of six consecutive pairs of joints, as created by seven low joints. Track with joints staggered less than 10 feet apart shall not be considered as having staggered joints. Joints within the seven low joints outside of the regular joint spacing shall not be considered as joints for purposes of this footnote.
[3] Curved track limits shall be applied only when track curvature is greater than 0.25 degree.

(b) For operations at a qualified cant deficiency, E_u, of more than 5 inches, a single deviation in track surface shall be within the limits prescribed in the following table:

Track surface [4] (inches)	Class of track			
	6	7	8	9
The difference in crosslevel between any two points less than 10 feet apart (short warp) may not be more than	1¼	1	[3] 1	¾
The deviation from uniform profile on either rail at the mid-ordinate of a 124-foot chord may not be more than	1½	1¼	1¼	1

[3] For curves with a qualified cant deficiency, E_u, of more than 7 inches, the difference in crosslevel between any two points less than 10 feet apart (short warp) may not be more than three-quarters of an inch.
[4] Curved track surface limits shall be applied only when track curvature is greater than 0.25 degree.

(c) For three or more non-overlapping deviations in track surface occurring within a distance equal to five times the specified chord length, each of which exceeds the limits in the following table, each track owner shall maintain the surface of the track within the limits prescribed for each deviation:

Track surface (inches)	Class of track			
	6	7	8	9
The deviation from uniform profile on either rail at the mid-ordinate of a 31-foot chord may not be more than	¾	¾	½	⅜
The deviation from uniform profile on either rail at the mid-ordinate of a 62-foot chord may not be more than	¾	¾	¾	½

Track surface (inches)	Class of track			
	6	7	8	9
The deviation from uniform profile on either rail at the mid-ordinate of a 124-foot chord may not be more than	1¼	1	⅞	⅝

14. Section 213.332 is added to read as follows:

§ 213.332 Combined alinement and surface deviations.

(a) This section applies to any curved track where operations are conducted at a qualified cant deficiency, E_u, greater than 5 inches, and to all Class 9 track, either curved or tangent.

(b) For the conditions defined in paragraph (a) of this section, the combination of alinement and surface deviations for the same chord length on the outside rail in a curve and on any of the two rails of a tangent section, as measured by a TGMS, shall comply with the following formula:

$$\frac{3}{4}\times\left|\frac{A_m}{A_L}+\frac{S_m}{S_L}\right|\leq 1$$

Where—

A_m = measured alinement deviation from uniformity (outward is positive, inward is negative).

A_L = allowable alinement limit as per § 213.327(c) (always positive) for the class of track.

S_m = measured profile deviation from uniformity (down is positive, up is negative).

S_L = allowable profile limit as per §§ 213.331(a) and 213.331 (b) (always positive) for the class of track.

$$\left|\frac{A_m}{A_L}+\frac{S_m}{S_L}\right| = \text{the absolute (positive) value of the result of } \frac{A_m}{A_L}+\frac{S_m}{S_L}.$$

15. Section 213.333 is amended by revising paragraphs (a),(b)(1) and (b)(2), (c), (h) through (m), and the Vehicle/Track Interaction Safety Limits table to read as follows:

§ 213.333 Automated vehicle inspection systems.

(a) A qualifying Track Geometry Measuring System (TGMS) shall be operated at the following frequency:

(1) For operations at a qualified cant deficiency, E_u, of more than 5 inches on track Classes 1 through 5, at least twice per calendar year with not less than 120 days between inspections.

(2) For track Class 6, at least once per calendar year with not less than 170 days between inspections. For operations at a qualified cant deficiency, E_u, of more than 5 inches on track Class 6, at least twice per calendar year with not less than 120 days between inspections.

(3) For track Class 7, at least twice within any 120-day period with not less than 25 days between inspections.

(4) For track Classes 8 and 9, at least twice within any 60-day period with not less than 12 days between inspections.

(b) * * *

(1) Track geometry measurements shall be taken no more than 3 feet away from the contact point of wheels carrying a vertical load of no less than 10,000 pounds per wheel;

(2) Track geometry measurements shall be taken and recorded on a distance-based sampling interval not exceeding 1 foot; and

* * * * *

(c) A qualifying TGMS shall be capable of measuring and processing the necessary track geometry parameters, at an interval of no more than every 1 foot, to determine compliance with—

(1) For operations at a qualified cant deficiency, E_u, of more than 5 inches on track Classes 1 through 5: § 213.53, Track gage; § 213.55(b), Track alinement; § 213.57, Curves; elevation and speed limitations; § 213.63, Track surface; and § 213.65, Combined alinement and surface deviations.

(2) For track Classes 6 through 9: § 213.323, Track gage; § 213.327, Track alinement; § 213.329, Curves; elevation and speed limitations; § 213.331, Track surface; and for operations at a cant deficiency of more than 5 inches § 213.332, Combined alinement and surface deviations.

* * * * *

(h) For track Classes 8 and 9, a qualifying Gage Restraint Measuring System (GRMS) shall be operated at least once per calendar year with at least 170 days between inspections. The lateral capacity of the track structure shall not permit a Gage Widening Projection (GWP) greater than 0.5 inch.

(i) A GRMS shall meet or exceed minimum design requirements specifying that—

(1) Gage restraint shall be measured between the heads of the rail:

(i) At an interval not exceeding 16 inches;

(ii) Under an applied vertical load of no less than 10 kips per rail; and

(iii) Under an applied lateral load that provides for lateral/vertical load ratio of between 0.5 and 1.25,[10] and a load severity greater than 3 kips but less than 8 kips per rail. Load severity is defined by the formula:

$$S = L - cV$$

Where—

S = Load severity, defined as the lateral load applied to the fastener system (kips).

L = Actual lateral load applied (kips).

c = Coefficient of friction between rail/tie, which is assigned a nominal value of 0.4.

V = Actual vertical load applied (kips), or static vertical wheel load if vertical load is not measured.

(2) The measured gage and load values shall be converted to a GWP as follows:

$$GWP = (LTG - UTG)\times\frac{8.26}{L - 0.258\times V}$$

Where—

UTG = Unloaded track gage measured by the GRMS vehicle at a point no less than 10 feet from any lateral or vertical load application.

LTG = Loaded track gage measured by the GRMS vehicle at a point no more than 12 inches from the lateral load application.

L = Actual lateral load applied (kips).

V = Actual vertical load applied (kips), or static vertical wheel load if vertical load is not measured.

GWP = Gage Widening Projection, which means the measured gage widening, which is the difference between loaded and unloaded gage, at the applied loads, projected to reference loads of 16,000 pounds of lateral force and 33,000 pounds of vertical force.

[10] GRMS equipment using load combinations developing L/V ratios that exceed 0.8 shall be operated with caution to protect against the risk of wheel climb by the test wheelset.

(j) A vehicle having dynamic response characteristics that are representative of other vehicles assigned to the service shall be operated over the route at the revenue speed profile. The vehicle shall either be instrumented or equipped with a portable device that monitors onboard instrumentation on trains. Track personnel shall be notified when onboard accelerometers indicate a possible track-related problem. The tests shall be conducted at the following frequency, unless otherwise determined by FRA after reviewing the test data required by this subpart:

(1) For operations at a qualified cant deficiency, E_u, of more than 5 inches on track Classes 1 through 6, carbody acceleration shall be monitored at least once each calendar quarter with not less than 25 days between inspections on at least one passenger car of each type that is assigned to the service; and

(2) For operations at track Class 7 speeds, carbody and truck accelerations shall be monitored at least twice within any 60-day period with not less than 12 days between inspections on at least one passenger car of each type that is assigned to the service; and

(3) For operations at track Classes 8 and 9 speeds, carbody acceleration shall be monitored at least four times within any 7-day period with not more than 3 days between inspections on at least one non-passenger and one passenger carrying vehicle of each type that is assigned to the service. Truck acceleration shall be monitored at least twice within any 60-day period with not less than 12 days between inspections on at least one passenger carrying vehicle of each type that is assigned to the service.

(k)(1) The instrumented vehicle or the portable device, as required in paragraph (j) of this section, shall monitor vertical and lateral accelerations. The accelerometers shall be placed on the floor of the vehicle as near the center of a truck as practicable.

(2) In addition, a device for measuring lateral accelerations shall be mounted on a truck frame at a longitudinal location as close as practicable to an axle's centerline (either outside axle for trucks containing more than 2 axles), or, if approved by FRA, at an alternate location. After monitoring this data for 2 years, or 1 million miles, whichever occurs first, the track owner or railroad may petition FRA for exemption from this requirement.

(3) If any of the carbody lateral, carbody vertical, or truck frame lateral acceleration safety limits in this section's table of vehicle/track interaction safety limits is exceeded, appropriate speed restrictions shall be applied until corrective action is taken.

(l) For track Classes 8 and 9, the track owner or railroad shall submit a report to FRA, once each calendar year, which provides an analysis of the monitoring data collected in accordance with paragraphs (j) and (k) of this section. Based on a review of the report, FRA may require that an instrumented vehicle having dynamic response characteristics that are representative of other vehicles assigned to the service be operated over the track at the revenue speed profile. The instrumented vehicle shall be equipped to measure wheel/rail forces. If any of the wheel/rail force limits in this section's table of vehicle/track interaction safety limits is exceeded, appropriate speed restrictions shall be applied until corrective action is taken.

(m) The track owner or railroad shall maintain a copy of the most recent exception printouts for the inspections required under paragraphs (j), (k), and (l) of this section, as appropriate.

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Vehicle/Track Interaction Safety Limits

Wheel-Rail Forces [1]			
Parameter	**Safety Limit**	**Filter/ Window**	**Requirements**
Single Wheel Vertical Load Ratio	≥ 0.15	5 ft	No wheel of the vehicle shall be permitted to unload to less than 15% of the static vertical wheel load for 5 or more continuous feet. The static vertical wheel load is defined as the load that the wheel would carry when stationary on level track.
Single Wheel L/V Ratio	$\leq \frac{\tan(\delta) - 0.5}{1 + 0.5\tan(\delta)}$	5 ft	The ratio of the lateral force that any wheel exerts on an individual rail to the vertical force exerted by the same wheel on the rail shall not be greater than the safety limit calculated for the wheel's flange angle (δ) for 5 or more continuous feet.
Net Axle Lateral L/V Ratio	$\leq 0.4 + \frac{5.0}{Va}$	5 ft	The net axle lateral force, in kips, exerted by any axle on the track shall not exceed a total of 5 kips plus 40% of the static vertical load that the axle exerts on the track for 5 or more continuous feet. Va = static vertical axle load (kips)
Truck Side L/V Ratio	≤ 0.6	5 ft	The ratio of the lateral forces that the wheels on one side of any truck exert on an individual rail to the vertical forces exerted by the same wheels on that rail shall not be greater than 0.6 for 5 or more continuous feet.

Carbody Accelerations [2]			
Parameter	**Passenger Cars**	**Other Vehicles**	**Requirements**
Carbody Lateral (Transient)	≤ 0.65g peak-to-peak 1 sec window[3]	≤ 0.75g peak-to-peak 1 sec window[3]	The peak-to-peak accelerations, measured as the algebraic difference

	excludes peaks < 50 msec	excludes peaks < 50 msec	between the two extreme values of measured acceleration in any 1-second time period, excluding any peak lasting less than 50 milliseconds, shall not exceed 0.65g and 0.75g for passenger cars and other vehicles, respectively.
Carbody Lateral (Sustained Oscillatory)	≤ 0.10g RMS_t[4] 4 sec window[3] 4 sec sustained	≤ 0.12g RMS_t[4] 4 sec window[3] 4 sec sustained	Sustained oscillatory lateral acceleration of the carbody shall not exceed the prescribed (root mean squared) safety limits of 0.10g and 0.12g for passenger cars and other vehicles, respectively. Root mean squared values are to be determined over a sliding 4- second window with linear trend removed and shall be sustained for more than 4 seconds.
Carbody Vertical (Transient)	≤ 1.0g peak-to-peak 1 sec window[3] excludes peaks < 50 msec	≤ 1.0g peak-to-peak 1 sec window[3] excludes peaks < 50 msec	The peak-to-peak accelerations, measured as the algebraic difference between the two extreme values of measured acceleration in any one second time period, excluding any peak lasting less than 50 milliseconds, shall not exceed 1.0g.
Carbody Vertical (Sustained Oscillatory)	≤ 0.25g RMS_t[4] 4 sec window[3] 4 sec sustained	≤ 0.25g RMS_t[4] 4 sec window[3] 4 sec sustained	Sustained oscillatory vertical acceleration of the carbody shall not exceed the prescribed (root mean squared) safety limit of 0.25g. Root mean squared values are to be determined over a sliding 4-second window with linear trend removed and shall be sustained for more than 4 seconds.

Truck Lateral Acceleration[5]			
Parameter	**Safety Limit**	**Filter/ Window**	**Requirements**
Truck Lateral Acceleration	≤ 0.30g RMS_t[4]	2 sec window[3] 2 sec sustained	Truck hunting shall not develop below the maximum authorized speed. Truck hunting is defined as a sustained cyclic oscillation of the truck evidenced by lateral accelerations exceeding 0.3g root mean squared for more than 2 seconds. Root mean squared values are to be determined over a sliding 2-second window with linear trend removed.

[1] The lateral and vertical wheel forces shall be measured and processed through a low pass filter (LPF) with a minimum cut-off frequency of 25 Hz. The sample rate for wheel force data shall be at least 250 samples per second.

[2] Carbody accelerations in the vertical and lateral directions shall be measured by accelerometers oriented and located in accordance with § 213.333(k).

[3] Acceleration measurements shall be processed through an LPF with a minimum cut-off frequency of 10 Hz. The sample rate for acceleration data shall be at least 100 samples per second.

[4] RMS_t = RMS with linear trend removed.

[5] Truck lateral acceleration shall be measured on the truck frame by accelerometers oriented and located in accordance with § 213.333(k).

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16. Section 213.345 is revised to read as follows:

§ 213.345 Vehicle/track system qualification.

(a) *General.* All vehicle types intended to operate at track Class 6 speeds or above or at any curving speed producing more than 5 inches of cant deficiency shall be qualified for operation for their intended track classes in accordance with this subpart. A qualification program shall be used to ensure that the vehicle/track system will not exceed the wheel/rail force safety limits and the carbody and truck acceleration criteria specified in § 213.333—

(1) At any speed up to and including 5 m.p.h. above the proposed maximum operating speed; and

(2) On track meeting the requirements for the class of track associated with the proposed maximum operating speed. For purposes of qualification testing, speeds that are up to 5 m.p.h. in excess of the maximum allowable speed for each class are permitted.

(b) *Existing vehicle type qualification.* Vehicle types previously qualified or permitted to operate at track Class 6 speeds or above or at any curving speeds producing more than 5 inches of cant deficiency prior to [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], shall be considered as being successfully qualified under the requirements of this section for operation at the previously operated speeds and cant deficiencies over the previously operated track segment(s).

(c) *New vehicle type qualification.* Vehicle types not previously qualified under this subpart be qualified in accordance with the requirements of this paragraph (c).

(1) *Simulations.* For vehicle types intended to operate at track Class 6 speeds or above, or at any curving speed producing more than 6 inches of cant deficiency, analysis of vehicle/track performance (computer simulations) shall be conducted using an industry recognized methodology on:

(i) An analytically defined track segment representative of minimally compliant track conditions (MCAT—Minimally Compliant Analytical Track) for the respective track classes as specified in appendix D to this part; and

(ii) A track segment representative of the full route on which the vehicle type is intended to operate. Both simulations and physical examinations of the route's track geometry shall be used to determine a track segment representative of the route.

(2) *Carbody acceleration.* For vehicle types intended to operate at track Class 6 speeds or above, or at any curving speed producing more than 5 inches of cant deficiency, qualification testing conducted over a representative segment of the route shall ensure that the vehicle type will not exceed the carbody lateral and vertical acceleration safety limits specified in § 213.333.

(3) *Truck lateral acceleration.* For vehicle types intended to operate at track Class 6 speeds or above, qualification testing conducted over a representative segment of the route shall ensure that the vehicle type will not exceed the truck lateral acceleration safety limit specified in § 213.333.

(4) *Wheel/rail force measurement.* For vehicle types intended to operate at track Class 7 speeds or above, or at any curving speed producing more than 6 inches of cant deficiency, qualification testing conducted over a representative segment of the route shall ensure that the vehicle type will not exceed the wheel/rail force safety limits specified in § 213.333.

(d) *Previously qualified vehicle types.* Vehicle types previously qualified under this subpart for a track class and cant deficiency on one route may be

qualified for operation at the same class and cant deficiency on another route through analysis and testing in accordance with the requirements of this paragraph (d).

(1) *Simulations or wheel/rail force measurement.* For vehicle types intended to operate at track Class 7 speeds or above, or at any curving speed producing more than 6 inches of cant deficiency, simulations or measurement of wheel/rail forces during qualification testing shall ensure that the vehicle type will not exceed the wheel/rail force safety limits specified in § 213.333. Simulations, if conducted, shall be in accordance with paragraph (c)(1) of this section. Measurement of wheel/rail forces, if conducted, shall be performed over a representative segment of the new route.

(2) *Carbody acceleration.* For vehicle types intended to operate at any curving speed producing more than 5 inches of cant deficiency, or at both track Class 6 speeds or above and at any curving speed producing more than 4 inches of cant deficiency, qualification testing conducted over a representative segment of the new route shall ensure that the vehicle type will not exceed the carbody lateral and vertical acceleration safety limits specified in § 213.333.

(3) *Truck lateral acceleration.* For vehicle types intended to operate at track Class 7 speeds or above, simulations or measurement of truck lateral acceleration during qualification testing shall ensure that the vehicle type will not exceed the truck lateral acceleration safety limits specified in § 213.333. Measurement of truck lateral acceleration, if conducted, shall be performed over a representative segment of the new route.

(e) *Qualification test plan.* To obtain the data required to support the qualification program outlined in paragraphs (c) and (d) of this section, the track owner or railroad shall submit a qualification test plan to FRA at least 60 days prior to testing, requesting approval to conduct the test at the desired speeds and cant deficiencies. This test plan shall provide for a test program sufficient to evaluate the operating limits of the track and vehicle type and shall include:

(1) The results of vehicle/track performance simulations as required in this subpart;

(2) Identification of the representative segment of the route for qualification testing;

(3) Consideration of the operating environment during qualification testing, including operating practices and conditions, the signal system, highway-rail grade crossings, and trains on adjacent tracks;

(4) The design wheel flange angle that will be used for the determination of the Single Wheel L/V Ratio safety limit specified in § 213.333;

(5) A target maximum testing speed and a target maximum cant deficiency in accordance with paragraph (a) of this section;

(6) An analysis and description of the signal system and operating practices to govern operations in track Classes 7 through 9, which shall include a statement of sufficiency in these areas for the class of operation; and

(7) When simulations are required as part of vehicle qualification, an analysis showing all simulation results.

(f) *Qualification test.* Upon FRA approval of the qualification test plan, qualification testing shall be conducted in two sequential stages as required in this subpart.

(1) Stage-one testing shall include demonstration of acceptable vehicle dynamic response of the subject vehicle as speeds are incrementally increased—

(i) On a segment of tangent track, from acceptable track Class 5 speeds to the target maximum test speed (when the target speed corresponds to track Class 6 and above operations); and

(ii) On a segment of curved track, from the speeds corresponding to 3 inches of cant deficiency to the maximum target maximum cant deficiency.

(2) When stage-one testing has successfully demonstrated a maximum safe operating speed and cant deficiency, stage-two testing shall commence with the subject equipment over a representative segment of the route as identified in paragraph (e)(2) of this section.

(i) A test run shall be conducted over the route segment at the speed the railroad will request FRA to approve for such service.

(ii) An additional test run shall be conducted at 5 m.p.h. above this speed.

(3) When conducting stage-one and stage-two testing, if any of the monitored safety limits is exceeded, on any segment of track intended for operation at track Class 6 speed or greater, or on any segment of track intended for operation at more than 5 inches of cant deficiency, testing may continue provided the track location(s) where the limits are exceeded are identified and test speeds are limited at the track location(s) until corrective action is taken. Corrective action may include making an adjustment in the track, in the vehicle, or both of these system components. Measurements taken on track segments intended for operations below track Class 6 speeds and at 5 inches of cant deficiency or less are not required to be reported.

(4) Prior to the start of the qualification test program, a qualifying Track Geometry Measuring System (TGMS) specified in § 213.333 shall be operated over the intended route within 30 calendar days prior to the start of the qualification test program.

(g) *Qualification test results.* The track owner or railroad shall submit a report to FRA detailing all the results of the qualification program. When simulations are required as part of vehicle qualification, this report shall include a comparison of simulation predictions to the actual wheel/rail force or acceleration data, or both, recorded during full-scale testing. The report shall be submitted at least 60 days prior to the intended operation of the equipment in revenue service over the route.

(h) Based on the test results and submissions, FRA will approve a maximum train speed and value of cant deficiency for revenue service. FRA may impose conditions necessary for safely operating at the maximum train speed and value of cant deficiency approved.

17. Section 213.355 is revised to read as follows:

§ 213.355 Frog guard rails and guard faces; gage.

The guard check and guard face gages in frogs shall be within the limits prescribed in the following table—

Class of track	Guard check gage	Guard face gage
	The distance between the gage line of a frog to the guard line [1] of its guard rail or guarding face, measured across the track at right angles to the gage line,[2] may not be less than—	The distance between guard lines,[1] measured across the track at right angles to the gage line,[2] may not be more than—
Class 6, 7, 8 and 9 track	4′6½″	4′5″

[1] A line along that side of the flangeway which is nearer to the center of the track and at the same elevation as the gage line.
[2] A line five-eighths of an inch below the top of the center line of the head of the running rail, or corresponding location of the tread portion of the track structure.

18. Appendix A to part 213 is revised to read as follows:

Appendix A to Part 213—Maximum Allowable Curving Speeds

This appendix contains four tables identifying maximum allowing curving speeds based on 3, 4, 5, and 6 inches of unbalance (cant deficiency), respectively.

TABLE 1—THREE INCHES UNBALANCE

[Elevation of outer rail (inches)]

Degree of curvature	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
Maximum allowable operating speed (m.p.h.)													
0°30′	93	100	107	113	120	125	131	136	141	146	151	156	160
0°40′	80	87	93	98	104	109	113	118	122	127	131	135	139
0°50′	72	77	83	88	93	97	101	106	110	113	117	121	124
1°00′	65	71	76	80	85	89	93	96	100	104	107	110	113
1°15′	59	63	68	72	76	79	83	86	89	93	96	99	101
1°30′	53	58	62	65	69	72	76	79	82	85	87	90	93
1°45′	49	53	57	61	64	67	70	73	76	78	81	83	86
2°00′	46	50	53	57	60	63	65	68	71	73	76	78	80
2°15′	44	47	50	53	56	59	62	64	67	69	71	73	76
2°30′	41	45	48	51	53	56	59	61	63	65	68	70	72
2°45′	39	43	46	48	51	53	56	58	60	62	64	66	68
3°00′	38	41	44	46	49	51	53	56	58	60	62	64	65
3°15′	36	39	42	44	47	49	51	53	55	57	59	61	63
3°30′	35	38	40	43	45	47	49	52	53	55	57	59	61
3°45′	34	37	39	41	44	46	48	50	52	53	55	57	59
4°00′	33	35	38	40	42	44	46	48	50	52	53	55	57
4°30′	31	33	36	38	40	42	44	45	47	49	50	52	53
5°00′	29	32	34	36	38	40	41	43	45	46	48	49	51
5°30′	28	30	32	34	36	38	39	41	43	44	46	47	48
6°00′	27	29	31	33	35	36	38	39	41	42	44	45	46
6°30′	26	28	30	31	33	35	36	38	39	41	42	43	44
7°00′	25	27	29	30	32	34	35	36	38	39	40	42	43
8°00′	23	25	27	28	30	31	33	34	35	37	38	39	40
9°00′	22	24	25	27	28	30	31	32	33	35	36	37	38
10°00′	21	22	24	25	27	28	29	30	32	33	34	35	36
11°00′	20	21	23	24	25	27	28	29	30	31	32	33	34
12°00′	19	20	22	23	24	26	27	28	29	30	31	32	33

TABLE 2—FOUR INCHES UNBALANCE

[Elevation of outer rail (inches)]

Degree of curvature	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
Maximum allowable operating speed (m.p.h.)													
0°30′	107	113	120	125	131	136	141	146	151	156	160	165	169
0°40′	93	98	104	109	113	118	122	127	131	135	139	143	146
0°50′	83	88	93	97	101	106	110	113	117	121	124	128	131
1°00′	76	80	85	89	93	96	100	104	107	110	113	116	120
1°15′	68	72	76	79	83	86	89	93	96	99	101	104	107
1°30′	62	65	69	72	76	79	82	85	87	90	93	95	98
1°45′	57	61	64	67	70	73	76	78	81	83	86	88	90
2°00′	53	57	60	63	65	68	71	73	76	78	80	82	85
2°15′	50	53	56	59	62	64	67	69	71	73	76	78	80
2°30′	48	51	53	56	59	61	63	65	68	70	72	74	76
2°45′	46	48	51	53	56	58	60	62	64	66	68	70	72

TABLE 2—FOUR INCHES UNBALANCE—Continued

[Elevation of outer rail (inches)]

Degree of curvature	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
3°00′	44	46	49	51	53	56	58	60	62	64	65	67	69
3°15′	42	44	47	49	51	53	55	57	59	61	63	65	66
3°30′	40	43	45	47	49	52	53	55	57	59	61	62	64
3°45′	39	41	44	46	48	50	52	53	55	57	59	60	62
4°00′	38	40	42	44	46	48	50	52	53	55	57	58	60
4°30′	36	38	40	42	44	45	47	49	50	52	53	55	56
5°00′	34	36	38	40	41	43	45	46	48	49	51	52	53
5°30′	32	34	36	38	39	41	43	44	46	47	48	50	51
6°00′	31	33	35	36	38	39	41	42	44	45	46	48	49
6°30′	30	31	33	35	36	38	39	41	42	43	44	46	47
7°00′	29	30	32	34	35	36	38	39	40	42	43	44	45
8°00′	27	28	30	31	33	34	35	37	38	39	40	41	42
9°00′	25	27	28	30	31	32	33	35	36	37	38	39	40
10°00′	24	25	27	28	29	30	32	33	34	35	36	37	38
11°00′	23	24	25	27	28	29	30	31	32	33	34	35	36
12°00′	22	23	24	26	27	28	29	30	31	32	33	34	35

TABLE 3—FIVE INCHES UNBALANCE

[Elevation of outer rail (inches)]

Degree of curvature	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
Maximum allowable operating speed (m.p.h.)													
0°30′	120	125	131	136	141	146	151	156	160	165	169	173	177
0°40′	104	109	113	118	122	127	131	135	139	143	146	150	150
0°50′	93	97	101	106	110	113	117	121	124	128	131	134	137
1°00′	85	89	93	96	100	104	107	110	113	116	120	122	125
1°15′	76	79	83	86	89	93	96	99	101	104	107	110	112
1°30′	69	72	76	79	82	85	87	90	93	95	98	100	102
1°45′	64	67	70	73	76	78	81	83	86	88	90	93	95
2°00′	60	63	65	68	71	73	76	78	80	82	85	87	89
2°15′	56	59	62	64	67	69	71	73	76	78	80	82	84
2°30′	53	56	59	61	63	65	68	70	72	74	76	77	79
2°45′	51	53	56	58	60	62	64	66	68	70	72	74	76
3°00′	49	51	53	56	58	60	62	64	65	67	69	71	72
3°15′	47	49	51	53	55	57	59	61	63	65	66	68	70
3°30′	45	47	49	52	53	55	57	59	61	62	64	65	67
3°45′	44	46	48	50	52	53	55	57	59	60	62	63	65
4°00′	42	44	46	48	50	52	53	55	57	58	60	61	63
4°30′	40	42	44	45	47	49	50	52	53	55	56	58	59
5°00′	38	40	41	43	45	46	48	49	51	52	53	55	56
5°30′	36	38	39	41	43	44	46	47	48	50	51	52	53
6°00′	35	36	38	39	41	42	44	45	46	48	49	50	51
6°30′	33	35	36	38	39	41	42	43	44	46	47	48	49
7°00′	32	34	35	36	38	39	40	42	43	44	45	46	47
8°00′	30	31	33	34	35	37	38	39	40	41	42	43	44
9°00′	28	30	31	32	33	35	36	37	38	39	40	41	42
10°00′	27	28	29	30	32	33	34	35	36	37	38	39	40
11°00′	25	27	28	29	30	31	32	33	34	35	36	37	38
12°00′	24	26	27	28	29	30	31	32	33	34	35	35	36

TABLE 4—SIX INCHES UNBALANCE

[Elevation of outer rail (inches)]

Degree of curvature	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
Maximum allowable operating speed (m.p.h.)													
0°30′	131	136	141	146	151	156	160	165	169	173	177	181	185
0°40′	113	118	122	127	131	135	139	143	146	150	154	157	160
0°50′	101	106	110	113	117	121	124	128	131	134	137	140	143
1°00′	93	96	100	104	107	110	113	116	120	122	125	128	131
1°15′	83	86	89	93	96	99	101	104	107	110	112	115	117
1°30′	76	79	82	85	87	90	93	95	98	100	102	105	107
1°45′	70	73	76	78	81	83	86	88	90	93	95	97	99
2°00′	65	68	71	73	76	78	80	82	85	87	89	91	93
2°15′	62	64	67	69	71	73	76	78	80	82	84	85	87

TABLE 4—SIX INCHES UNBALANCE—Continued

[Elevation of outer rail (inches)]

Degree of curvature	0	½	1	1½	2	2½	3	3½	4	4½	5	5½	6
2°30′	59	61	63	65	68	70	72	74	76	77	79	81	83
2°45′	56	58	60	62	64	66	68	70	72	74	76	77	79
3°00′	53	56	58	60	62	64	65	67	69	71	72	74	76
3°15′	51	53	55	57	59	61	63	65	66	68	70	71	73
3°30′	49	52	53	55	57	59	61	62	64	65	67	69	70
3°45′	48	50	52	53	55	57	59	60	62	63	65	66	68
4°00′	46	48	50	52	53	55	57	58	60	61	63	64	65
4°30′	44	45	47	49	50	52	53	55	56	58	59	60	62
5°00′	41	43	45	46	48	49	51	52	53	55	56	57	59
5°30′	39	41	43	44	46	47	48	50	51	52	53	55	56
6°00′	38	39	41	42	44	45	46	48	49	50	51	52	53
6°30′	36	38	39	41	42	43	44	46	47	48	49	50	51
7°00′	35	36	38	39	40	42	43	44	45	46	47	48	49
8°00′	33	34	35	37	38	39	40	41	42	43	44	45	46
9°00′	31	32	33	35	36	37	38	39	40	41	42	43	44
10°00′	29	30	32	33	34	35	36	37	38	39	40	41	41
11°00′	28	29	30	31	32	33	34	35	36	37	38	39	39
12°00′	27	28	29	30	31	32	33	34	35	35	36	37	38

19. Appendix D to part 213 is added to read as follows:

Appendix D to Part 213—Minimally Compliant Analytical Track (MCAT) Simulations Used for Qualifying Vehicles To Operate at High Speeds and at High Cant Deficiencies

1. This appendix contains requirements for using computer simulations to comply with the vehicle/track qualification testing requirements specified in subpart G of this part. These simulations shall be performed using a track model containing defined geometry perturbations at the limits that are permitted for a class of track and level of cant deficiency. This track model is known as MCAT, Minimally Compliant Analytical Track. These simulations shall be used to identify vehicle dynamic performance issues prior to service, and demonstrate that a vehicle type is suitable for operation on the track over which it will operate.

2. As specified in § 213.345(c)(1), MCAT shall be used for the qualification of new vehicle types intended to operate at speeds corresponding to Class 6 through Class 9 track, or at any curving speed producing more than 6 inches of cant deficiency. In addition, as specified in § 213.345(d)(1), MCAT may be used to qualify on new routes vehicle types that have previously been qualified on other routes and are intended to operate at speeds corresponding to Class 7 through Class 9 track, or at any curving speed producing more than 6 inches of cant deficiency.

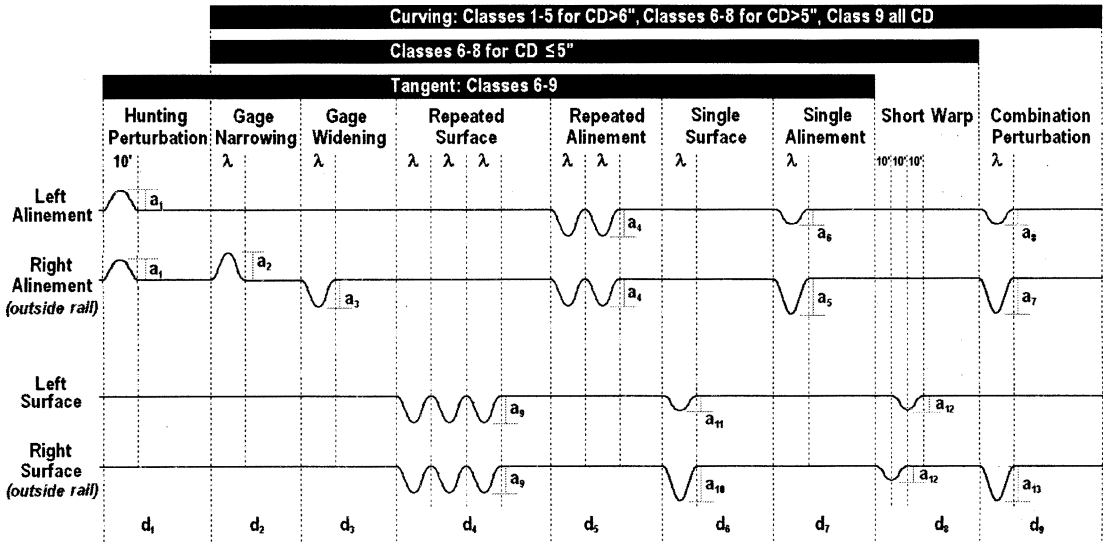
3. For a comprehensive safety evaluation, the track owner or railroad shall identify any non-redundant suspension system element or component that may present a single point of failure. Additional MCAT simulations reflecting the fully-degraded mode of the vehicle type's performance due to such a failure shall be included.

(a) *Validation.* To validate the vehicle model used for MCAT simulations under this part, the track owner or railroad shall obtain vehicle simulation predictions using measured track geometry data, chosen from the same track section over which testing is to be performed as determined by § 213.345(c)(1)(ii). These predictions shall be submitted to FRA in support of the request for approval of the qualification test plan. Full validation of the vehicle model used for MCAT simulations under this part shall be determined when the results of the simulations demonstrate that they replicate all key responses observed during the qualification test.

(b) *MCAT layout.* MCAT consists of nine segments, each designed to test a vehicle's performance in response to a specific type of track perturbation. The basic layout of MCAT is shown in figure 1 of this appendix, by type of track (curving or tangent), class of track, and cant deficiency (CD). The values for wavelength, λ, amplitude of perturbation, a, and segment length, d, are specified in this appendix.

Figure 1 of Appendix D to Part 213

Basic MCAT Layout



(1) *MCAT segments.* MCAT's nine segments contain different types of track deviations in which the shape of each deviation is a versine having wavelength and amplitude varied for each simulation speed as further specified. The nine MCAT segments are defined as follows:

(i) *Hunting perturbation* (a_1): This segment contains an alinement deviation on both rails to test vehicle stability on tangent track having a wavelength, λ, of 10 feet and amplitude of 0.5 inch. This segment is to be used only on tangent track simulations.

(ii) *Gage narrowing* (a_2): This segment contains an alinement deviation on one rail to reduce the gage from the nominal value to the minimum permissible gage or maximum alinement (whichever comes first).

(iii) *Gage widening* (a_3): This segment contains an alinement deviation on one rail to increase the gage from the nominal value to the maximum permissible gage or maximum alinement (whichever comes first).

(iv) *Repeated surface* (a_9): This segment contains three consecutive maximum permissible profile variations on each rail.

(v) *Repeated alinement* (a_4): This segment contains two consecutive maximum permissible alinement variations on each rail.

(vi) *Single surface* (a_{10}, a_{11}): This segment contains a maximum permissible profile variation on one rail. If the maximum permissible profile variation alone produces a condition which exceeds the maximum allowed warp condition, a second profile variation is also placed on the opposite rail to limit the warp to the maximum permissible value.

(vii) *Single alinement* (a_5, a_6): This segment contains a maximum permissible alinement variation on one rail. If the maximum permissible alinement variation alone produces a condition which exceeds the maximum allowed gage condition, a second alinement variation is also placed on the opposite rail to limit the gage to the maximum permissible value.

(viii) *Short warp* (a_{12}): This segment contains a pair of profile deviations to produce a maximum permissible 10-foot warp perturbation. The first is on the outside rail, and the second follows 10 feet farther on the inside rail. Each deviation has a wavelength, λ, of 20 feet and variable amplitude for each simulation speed as described below. This segment is to be used only on curved track simulations.

(ix) *Combination perturbation* (a_7, a_8, a_{13}): This segment contains a maximum permissible down and out combined geometry condition on the outside rail in the body of the curve. If the maximum permissible variations produce a condition which exceeds the maximum allowed gage condition, a second variation is also placed on the opposite rail as for the MCAT segments described in paragraphs (b)(1)(vi) and (vii). This segment is to be used only for curved track simulations at speeds producing more than 5 inches of cant deficiency on track Classes 6 through 9, and at speeds producing more than 6 inches of cant deficiency on track Classes 1 through 5.

(2) *Segment lengths:* Each MCAT segment shall be long enough to allow the vehicle's response to the track deviation(s) to damp out. Each segment shall also have a minimum length as specified in table 1 of this appendix, which references the distances in figure 1 of this appendix. For curved track segments, the perturbations shall be placed far enough in the body of the curve to allow for any spiral effects to damp out.

TABLE 1 OF APPENDIX D TO PART 213—MINIMUM LENGTHS OF MCAT SEGMENTS

Distances (ft)								
d_1	d_2	d_3	d_4	d_5	d_6	d_7	d_8	d_9
1000	1000	1000	1500	1000	1000	1000	1000	1000

(3) *Degree of curvature.* For each simulation involving assessment of curving performance, the degree of curvature, D, which generates a particular level of cant deficiency, E_u, for a given speed, V, shall be calculated using the following equation, which assumes a curve with 6 inches of superelevation:

$$D = \frac{6 + E_u}{0.0007 \times V^2}$$

Where:

D = Degree of curvature (degrees).
V = Simulation speed (m.p.h).
E_u = Cant deficiency (inches).

(c) *Required simulations.*

(1) To develop a comprehensive assessment of vehicle performance, simulations shall be performed for a variety of scenarios using MCAT. These simulations shall be performed to assess performance on tangent or curved track, or both, depending on the level of cant deficiency and speed (track class) as shown in table 2 of this appendix.

TABLE 2 OF APPENDIX D TO PART 213

[Required Vehicle Performance Assessment Using MCAT]

	New vehicle types on track classes 1 through 5 and previously qualified vehicle types on track classes 1 through 6	New vehicle types on track classes 6 through 8 and previously qualified vehicle types on track classes 7 and 8
Curved track: cant deficiency ≤ 6 inches	No simulation required	MCAT—performance on curve.
Curved track: cant deficiency > 6 inches	MCAT—performance on curve	MCAT—performance on curve.
Tangent track	No simulation required	MCAT—performance on tangent.

(i) All simulations shall be performed using the design wheel profile and a nominal track gage of 56.5 inches, using tables 3, 4, 5, or 6 of this appendix, as appropriate. In addition, all simulations involving the assessment of curving performance shall be repeated using a nominal track gage of 57.0 inches, using tables 4, 5, or 6 of this appendix, as appropriate.

(ii) If the running profile is different than APTA 340 or APTA 320, then all simulations shall be repeated using either the APTA 340 or the APTA 320 wheel profile, depending on the established conicity that is common for the operation. In lieu of these profiles, an alternative worn wheel profile may be used if approved by FRA.

(iii) All simulations shall be performed using a wheel/rail coefficient of friction of 0.5.

(2) *Vehicle performance on tangent track Classes 6 through 9.* For maximum vehicle speeds corresponding to track Class 6 and higher, the MCAT segments described in paragraphs (b)(1)(i) through (b)(1)(vii) of this appendix shall be used to assess vehicle performance on tangent track. A parametric matrix of MCAT simulations shall be performed using the following range of conditions:

(i) *Vehicle speed.* Simulations shall ensure that at up to 5 m.p.h. above the proposed maximum operating speed, the vehicle type shall not exceed the wheel/rail force and acceleration criteria defined in the Vehicle/Track Interaction Safety Limits table in § 213.333. Simulations shall be performed to demonstrate acceptable vehicle dynamic response by incrementally increasing speed from 95 m.p.h. (115 m.p.h. if a previously qualified vehicle type on an untested route) to 5 m.p.h. above the proposed maximum operating speed (in 5 m.p.h. increments).

(ii) *Perturbation wavelength.* For each speed, a set of three separate MCAT simulations shall be performed. In each MCAT simulation, every perturbation shall have the same wavelength. The following three wavelengths, λ, are to be used: 31, 62, and 124 feet.

(iii) *Amplitude parameters.* Table 3 of this appendix provides the amplitude values for the MCAT segments described in paragraphs (b)(1)(i) through (b)(1)(vii) of this appendix for each speed of the required parametric MCAT simulations. The last set of simulations shall be performed at 5 m.p.h. above the proposed maximum operating speed using the amplitude values in table 3 that correspond to the proposed maximum operating speed. For qualification of vehicle types involving speeds greater than track Class 6, the following additional simulations shall be performed:

(A) For vehicle types being qualified for track Class 7 speeds, one additional set of simulations shall be performed at 115 m.p.h. using the track Class 6 amplitude values in table 3 (*i.e.,* a 5 m.p.h. overspeed on Class 6 track).

(B) For vehicle types being qualified for track Class 8 speeds, two additional sets of simulations shall be performed. The first set at 115 m.p.h. using the track Class 6 amplitude values in table 3 (*i.e.,* a 5 m.p.h. overspeed on Class 6 track) and a second set at 130 m.p.h. using the track Class 7 amplitude values in table 3 (*i.e.,* a 5 m.p.h. overspeed on Class 7 track).

(C) For vehicle types being qualified for track Class 9 speeds, three additional sets of simulations shall be performed. The first set at 115 m.p.h. using the track Class 6 amplitude values in table 3 (*i.e.,* a 5 m.p.h. overspeed on Class 6 track), a second set at 130 m.p.h. using the track Class 7 amplitude values in table 3 (*i.e.,* a 5 m.p.h. overspeed on Class 7 track), and a third set at 165 m.p.h. using the track Class 8 amplitude values in table 3 (*i.e.,* a 5 m.p.h. overspeed on Class 8 track).

Table 3 of Appendix D to Part 213

Track Class 6 through 9 Amplitude Parameters in inches for MCAT Simulations on Tangent Track

		Standard Gage (56.5")			
		Class 6	Class 7	Class 8	Class 9
λ = 31 ft	a_1	0.500	0.500	0.500	0.500
	a_2	0.500	0.500	0.500	0.250
	a_3	0.500	0.500	0.500	0.500
	a_4	0.375	0.375	0.375	0.375
	a_5	0.500	0.500	0.500	0.500
	a_6	0.000	0.000	0.000	0.000
	a_9	0.750	0.750	0.500	0.375
	a_{10}	1.000	1.000	0.750	0.500
	a_{11}	0.000	0.000	0.000	0.000
λ = 62 ft	a_1	0.500	0.500	0.500	0.500
	a_2	0.500	0.500	0.500	0.250
	a_3	0.500	0.500	0.500	0.500
	a_4	0.500	0.375	0.375	0.375
	a_5	0.750	0.750	0.750	0.500
	a_6	0.250	0.250	0.250	0.000
	a_9	0.750	0.750	0.750	0.500
	a_{10}	1.000	1.000	1.000	0.750
	a_{11}	0.000	0.000	0.000	0.000
λ = 124 ft	a_1	0.500	0.500	0.500	0.500
	a_2	0.500	0.500	0.500	0.250
	a_3	0.750	0.750	0.750	0.750
	a_4	1.000	0.875	0.500	0.500
	a_5	1.500	1.250	1.000	0.750
	a_6	0.750	0.500	0.250	0.000
	a_9	1.250	1.000	0.875	0.875
	a_{10}	1.750	1.500	1.250	1.000
	a_{11}	0.250	0.000	0.000	0.000

(3) *Vehicle performance on curved Track Classes 6 through 9.* For maximum vehicle speeds corresponding to track Class 6 and higher, the MCAT segments described in paragraphs (b)(1)(ii) through (b)(1)(ix) in this appendix shall be used to assess vehicle performance on curved track. For curves less than 1 degree, simulations must also include the hunting perturbation segment described in paragraph (b)(1)(i) of this appendix. A parametric matrix of MCAT simulations shall be performed using the following range of conditions:

(i) *Vehicle speed.* Simulations shall ensure that at up to 5 m.p.h. above the proposed maximum operating speed, the vehicle type shall not exceed the wheel/rail force and acceleration criteria defined in the Vehicle/Track Interaction Safety Limits table in § 213.333. Simulations shall be performed to demonstrate acceptable vehicle dynamic response by incrementally increasing speed from 95 m.p.h. (115 m.p.h. if a previously qualified vehicle type on an untested route) to 5 m.p.h. above the proposed maximum operating speed (in 5 m.p.h. increments).

(ii) *Perturbation wavelength.* For each speed, a set of three separate MCAT simulations shall be performed. In each MCAT simulation, every perturbation shall have the same wavelength. The following three wavelengths, λ, are to be used: 31, 62, and 124 feet.

(iii) *Track curvature.* For each speed a range of curvatures shall be used to produce cant deficiency conditions ranging from greater than 3 inches up to the maximum intended for qualification (in 1 inch increments). The value of curvature, D, shall be determined using the equation defined in paragraph (a)(3) of this appendix. Each curve shall include representations of the MCAT segments described in paragraphs (b)(1)(ii) through (b)(1)(ix) of this appendix and have a fixed superelevation of 6 inches.

(iv) *Amplitude parameters.* Table 4 of this appendix provides the amplitude values for each speed of the required parametric MCAT simulations for cant deficiencies greater than 3 and less than or equal to 5 inches. Table 5 of this appendix provides the amplitude values for each speed of the required parametric MCAT simulations for cant deficiencies greater than 5 inches. The last set of simulations at the maximum cant deficiency shall be performed at 5 m.p.h. above the proposed maximum operating speed using the amplitude values in table 4 or 5 of this appendix, as appropriate, that correspond to the proposed maximum operating speed and cant deficiency. For these simulations, the value of curvature, D, shall correspond to the proposed maximum operating speed and cant deficiency. For qualification of vehicle types involving speeds greater than track Class 6, the following additional simulations shall be performed:

(A) For vehicle types being qualified for track Class 7 speeds, one additional set of simulations shall be performed at 115 m.p.h. using the track Class 6 amplitude values in table 4 or 5 of this appendix, as appropriate (*i.e.,* a 5 m.p.h. overspeed on Class 6 track) and a value of curvature, D, that corresponds to 110 m.p.h. and the proposed maximum cant deficiency.

(B) For vehicle types being qualified for track Class 8 speeds, two additional set of simulations shall be performed. The first set of simulations shall be

performed at 115 m.p.h. using the track Class 6 amplitude values in table 4 or 5 of this appendix, as appropriate (*i.e.,* a 5 m.p.h. overspeed on Class 6 track) and a value of curvature, D, that corresponds to 110 m.p.h. and the proposed maximum cant deficiency. The second set of simulations shall be performed at 130 m.p.h. using the track Class 7 amplitude values in table 4 or 5 of this appendix, as appropriate (*i.e.,* a 5 m.p.h. overspeed on Class 7 track) and a value of curvature, D, that corresponds to 125 m.p.h. and the proposed maximum cant deficiency.

(C) For vehicle types being qualified for track Class 9 speeds, three additional sets of simulations shall be performed. The first set of simulations shall be performed at 115 m.p.h. using the track Class 6 amplitude values in table 4 or 5 of this appendix, as appropriate (*i.e.,* a 5 m.p.h. overspeed on Class 6 track) and a value of curvature, D, that corresponds to 110 m.p.h. and the proposed maximum cant deficiency. The second set of simulations shall be performed at 130 m.p.h. using the track Class 7 amplitude values in table 4 or 5 of this appendix, as appropriate (*i.e.,* a 5 m.p.h. overspeed on Class 7 track) and a value of curvature, D, that corresponds to 125 m.p.h. and the proposed maximum cant deficiency. The third set of simulations shall be performed at 165 m.p.h. using the track Class 8 amplitude values in table 4 or 5 of this appendix, as appropriate (*i.e.,* a 5 m.p.h. overspeed on Class 8 track) and a value of curvature, D, that corresponds to 160 m.p.h. and the proposed maximum cant deficiency.

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Table 4 of Appendix D to Part 213

Track Classes 6 through 9 Amplitude Parameters (in inches) for MCAT Simulations on Curved Track (Cant Deficiency > 3 and ≤ 5 Inches)

		Standard Gage (56.5")				Wide Gage (57.0")			
		Class 6	Class 7	Class 8	Class 9	Class 6	Class 7	Class 8	Class 9
λ = 31 ft	a_2	0.500	0.500	0.500	0.250	0.500	0.500	0.500	0.500
	a_3	0.500	0.500	0.500	0.500	0.250	0.250	0.250	0.500
	a_4	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375
	a_5	0.500	0.500	0.500	0.500	0.500	0.500	0.500	0.500
	a_6	0.000	0.000	0.000	0.000	0.250	0.250	0.250	0.250
	a_7				0.333				0.333
	a_8				0.000				0.083
	a_9	0.750	0.750	0.500	0.375	0.750	0.750	0.500	0.375
	a_{10}	1.000	1.000	0.750	0.500	1.000	1.000	0.750	0.500
	a_{11}	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	a_{12}	0.625	0.563	0.500	0.500	0.625	0.563	0.500	0.500
	a_{13}				0.333				0.333
λ = 62 ft	a_2	0.500	0.500	0.500	0.250	0.500	0.500	0.500	0.500
	a_3	0.500	0.500	0.500	0.500	0.250	0.250	0.250	0.250
	a_4	0.500	0.375	0.375	0.375	0.500	0.375	0.375	0.375
	a_5	0.625	0.500	0.500	0.500	0.625	0.500	0.500	0.500
	a_6	0.125	0.000	0.000	0.000	0.375	0.250	0.250	0.250
	a_7				0.333				0.333
	a_8				0.000				0.083
	a_9	0.750	0.750	0.750	0.500	0.750	0.750	0.750	0.500
	a_{10}	1.000	1.000	1.000	0.750	1.000	1.000	1.000	0.750
	a_{11}	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	a_{12}	0.625	0.563	0.500	0.500	0.625	0.563	0.500	0.500
	a_{13}				0.500				0.500
λ = 124 ft	a_2	0.500	0.500	0.500	0.250	1.000	1.000	1.000	0.750
	a_3	0.750	0.750	0.750	0.750	0.250	0.250	0.250	0.250
	a_4	1.000	0.875	0.500	0.500	1.000	0.875	0.500	0.500
	a_5	1.500	1.250	0.750	0.750	1.500	1.250	0.750	0.750
	a_6	0.750	0.500	0.000	0.000	1.250	1.000	0.500	0.500
	a_7				0.500				0.500
	a_8				0.000				0.250
	a_9	1.250	1.000	0.875	0.875	1.250	1.000	0.875	0.875
	a_{10}	1.750	1.500	1.250	1.000	1.750	1.500	1.250	1.000
	a_{11}	0.250	0.000	0.000	0.000	0.250	0.000	0.000	0.000
	a_{12}	0.625	0.563	0.500	0.500	0.625	0.563	0.500	0.500
	a_{13}				0.833				0.833

Table 5 of Appendix D to Part 213

Track Class 6 through 9 Amplitude Parameters (in inches) for MCAT Simulations on Curved Track (Cant Deficiency > 5 Inches)

		Standard Gage (56.5")				Wide Gage (57.0")			
		Class 6	Class 7	Class 8	Class 9	Class 6	Class 7	Class 8	Class 9
λ = 31 ft	a_2	0.500	0.500	0.500	0.250	0.500	0.500	0.500	0.500
	a_3	0.500	0.500	0.500	0.500	0.250	0.250	0.250	0.500
	a_4	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375
	a_5	0.500	0.500	0.500	0.500	0.500	0.500	0.500	0.500
	a_6	0.000	0.000	0.000	0.000	0.250	0.250	0.250	0.250
	a_7	0.333	0.333	0.333	0.333	0.333	0.333	0.333	0.333
	a_8	0.000	0.000	0.000	0.000	0.083	0.083	0.083	0.083
	a_9	0.750	0.750	0.500	0.375	0.750	0.750	0.500	0.375
	a_{10}	1.000	1.000	0.750	0.500	1.000	1.000	0.750	0.500
	a_{11}	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	a_{12}	0.625	0.500	0.500[1]	0.500[1]	0.625	0.500	0.500[1]	0.500[1]
	a_{13}	0.667	0.667	0.500	0.333	0.667	0.667	0.500	0.333
λ = 62 ft	a_2	0.500	0.500	0.500	0.250	0.500	0.500	0.500	0.500
	a_3	0.500	0.500	0.500	0.500	0.250	0.250	0.250	0.250
	a_4	0.500	0.375	0.375	0.375	0.500	0.375	0.375	0.375
	a_5	0.625	0.500	0.500	0.500	0.625	0.500	0.500	0.500
	a_6	0.125	0.000	0.000	0.000	0.375	0.250	0.250	0.250
	a_7	0.417	0.333	0.333	0.333	0.417	0.333	0.333	0.333
	a_8	0.000	0.000	0.000	0.000	0.167	0.083	0.083	0.083
	a_9	0.750	0.750	0.750	0.500	0.750	0.750	0.750	0.500
	a_{10}	1.000	1.000	1.000	0.750	1.000	1.000	1.000	0.750
	a_{11}	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	a_{12}	0.625	0.500	0.500[1]	0.500[1]	0.625	0.500	0.500[1]	0.500[1]
	a_{13}	0.667	0.667	0.667	0.500	0.667	0.667	0.667	0.500
λ = 124 ft	a_2	0.500	0.500	0.500	0.250	1.000	1.000	1.000	0.750
	a_3	0.750	0.750	0.750	0.750	0.250	0.250	0.250	0.250
	a_4	1.000	0.875	0.500	0.500	1.000	0.875	0.500	0.500
	a_5	1.250	1.000	0.750	0.750	1.250	1.000	0.750	0.750
	a_6	0.500	0.250	0.000	0.000	1.000	0.750	0.500	0.500
	a_7	0.833	0.667	0.500	0.500	0.833	0.667	0.500	0.500
	a_8	0.083	0.000	0.000	0.000	0.583	0.417	0.250	0.250
	a_9	1.250	1.000	0.875	0.875	1.250	1.000	0.875	0.875
	a_{10}	1.500	1.250	1.250	1.000	1.500	1.250	1.250	1.000
	a_{11}	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	a_{12}	0.625	0.500	0.500[1]	0.500[1]	0.625	0.500	0.500[1]	0.500[1]
	a_{13}	1.000	0.833	0.833	0.667	1.000	0.833	0.833	0.667

[1] 0.375 for CD>7"

(4) *Vehicle performance on curved track Classes 1 through 5 at high cant deficiency.* For maximum vehicle speeds corresponding to track Classes 1 through 5, the MCAT segments described in paragraphs (b)(1)(ii) through (b)(1)(ix) of this appendix shall be used to assess vehicle performance on curved track if the proposed maximum cant deficiency is greater than 6 inches. For curves less than 1 degree, simulations must also include the hunting perturbation segment described in paragraph (b)(1)(i) of this appendix. A parametric matrix of MCAT simulations shall be performed using the following range of conditions:

(i) *Vehicle speed.* Simulations shall ensure that at up to 5 m.p.h. above the proposed maximum operating speed, the vehicle shall not exceed the wheel/rail force and acceleration criteria defined in the Vehicle/Track Interaction Safety Limits table in § 213.333. Simulations shall be performed to demonstrate acceptable vehicle dynamic response at 5 m.p.h. above the proposed maximum operating speed.

(ii) *Perturbation wavelength.* For each speed, a set of two separate MCAT simulations shall be performed. In each MCAT simulation, every perturbation shall have the same wavelength. The following two wavelengths, λ, are to be used: 31 and 62 feet.

(iii) *Track curvature.* For a speed corresponding to 5 m.p.h. above the proposed maximum operating speed, a range of curvatures shall be used to produce cant deficiency conditions ranging from 6 inches up to the maximum intended for qualification (in 1 inch increments). The value of curvature, D, shall be determined using the equation in paragraph (a)(3) of this appendix. Each curve shall contain the MCAT segments described in paragraphs (b)(1)(ii) through (b)(1)(ix) of this appendix and have a fixed superelevation of 6 inches.

(iv) *Amplitude parameters.* Table 6 of this appendix provides the amplitude values for the MCAT segments described in paragraphs (b)(1)(i) through (b)(1)(vii) of this appendix for each speed of the required parametric MCAT simulations.

Table 6 of Appendix D to Part 213

Track Class 1 through 5 Amplitude Parameters (in inches) for MCAT Simulations on Curved Track (Cant Deficiency > 6 Inches)

		Standard Gage (56.5")					Wider Gage (57.0")				
		Class 1	Class 2	Class 3	Class 4	Class 5	Class 1	Class 2	Class 3	Class 4	Class 5
λ = 31 ft	a_2	0.500	0.500	0.500	0.500	0.500	1.250	1.250	1.250	0.500	0.500
	a_3	1.250	1.250	1.250	0.500	0.500	0.750	0.750	0.750	0.500	0.500
	a_4	0.750	0.750	0.750	0.750	0.500	0.750	0.750	0.750	0.750	0.500
	a_5	0.750	0.750	0.750	0.750	0.500	0.750	0.750	0.750	0.750	0.500
	a_6	0.000	0.000	0.000	0.250	0.000	0.000	0.000	0.000	0.250	0.000
	a_7	0.500	0.500	0.500	0.500	0.333	0.500	0.500	0.500	0.500	0.333
	a_8	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	a_9	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	a_{10}	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	a_{11}	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	a_{12}	1.000	1.000	0.875	0.875	0.750	1.000	1.000	0.875	0.875	0.750
	a_{13}	0.667	0.667	0.667	0.667	0.667	0.667	0.667	0.667	0.667	0.667
λ = 62 ft	a_2	0.500	0.500	0.500	0.500	0.500	1.250	1.250	1.250	0.500	0.500
	a_3	1.250	1.250	1.250	0.500	0.500	0.750	0.750	0.750	0.500	0.500
	a_4	1.250	1.250	1.250	0.875	0.625	1.250	1.250	1.250	0.875	0.625
	a_5	1.250	1.250	1.250	0.875	0.625	1.250	1.250	1.250	0.875	0.625
	a_6	0.000	0.000	0.000	0.375	0.125	0.500	0.500	0.500	0.375	0.125
	a_7	0.833	0.833	0.833	0.583	0.417	0.833	0.833	0.833	0.583	0.417
	a_8	0.000	0.000	0.000	0.083	0.000	0.083	0.083	0.083	0.083	0.000
	a_9	1.750	1.750	1.750	1.250	1.000	1.750	1.750	1.750	1.250	1.000
	a_{10}	1.750	1.750	1.750	1.250	1.000	1.750	1.750	1.750	1.250	1.000
	a_{11}	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000	0.000
	a_{12}	1.000	1.000	0.875	0.875	0.750	1.000	1.000	0.875	0.875	0.750
	a_{13}	1.167	1.167	1.167	0.833	0.667	1.167	1.167	1.167	0.833	0.667

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PART 238—[AMENDED]

20. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Subpart C—Specific Requirements for Tier I Passenger Equipment

21. Section 238.227 is revised to read as follows:

§ 238.227 Suspension system.

On or after November 8, 1999—

(a) All passenger equipment shall exhibit freedom from truck hunting at all operating speeds. If truck hunting does occur, a railroad shall immediately take appropriate action to prevent derailment. Truck hunting is defined in § 213.333 of this chapter.

(b) Nothing in this section shall affect the requirements of the Track Safety Standards in part 213 of this chapter as they apply to passenger equipment as provided in that part. In particular—

(1) *Pre-revenue service qualification.* All passenger equipment intended for service at speeds greater than 90 mph or at any curving speed producing more than 5 inches of cant deficiency shall demonstrate safe operation during pre-revenue service qualification in accordance with § 213.345 of this chapter and is subject to the requirements of either § 213.57 or § 213.329 of this chapter, as appropriate.

(2) *Revenue service operation.* All passenger equipment intended for service at speeds greater than 90 mph or at any curving speed producing more than 5 inches of cant deficiency is subject to the requirements of § 213.333 of this chapter and either §§ 213.57 or 213.329 of this chapter, as appropriate.

Subpart E—Specific Requirements for Tier II Passenger Equipment

22. Section 238.427 is amended by revising paragraphs (a)(2), (b), and (c), and by removing paragraph (d) to read as follows:

§ 238.427 Suspension system.

(a) * * *

(2) All passenger equipment shall meet the safety performance standards for suspension systems contained in part 213 of this chapter, or alternative standards providing at least equivalent safety if approved by FRA under the provisions of § 238.21. In particular—

(i) *Pre-revenue service qualification.* All passenger equipment shall demonstrate safe operation during pre-revenue service qualification in accordance with § 213.345 of this chapter and is subject to the requirements of § 213.329 of this chapter.

(ii) *Revenue service operation.* All passenger equipment in service is subject to the requirements of §§ 213.329 and 213.333 of this chapter.

(b) *Carbody acceleration.* A passenger car shall not operate under conditions that result in a steady-state lateral acceleration greater than 0.15g, as measured parallel to the car floor inside the passenger compartment. Additional carbody acceleration limits are specified in § 213.333 of this chapter.

(c) *Truck (hunting) acceleration.* Each truck shall be equipped with a

permanently installed lateral accelerometer mounted on the truck frame. If truck hunting is detected, the train monitoring system shall provide an alarm to the operator and the train shall be slowed to a speed at least 5 mph less than the speed at which the truck hunting stopped. Truck hunting is defined in § 213.333 of this chapter.

23. Section 238.428 is added to read as follows:

§ 238.428 Overheat sensors.

Overheat sensors for each wheelset journal bearing shall be provided. The sensors may be placed either onboard the equipment or at reasonable intervals along the railroad's right-of-way.

Appendix C to Part 238 [Removed and Reserved]

24. Appendix C to part 238 is removed and reserved.

Issued in Washington, DC, on April 29, 2010.

Joseph C. Szabo,

Administrator.

[FR Doc. 2010–10624 Filed 5–7–10; 8:45 am]

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Part III

Office of Management and Budget

Office of Federal Procurement Policy

48 CFR Part 9904

Cost Accounting Standards: Harmonization of Cost Accounting Standards 412 and 413 With the Pension Protection Act of 2006; Proposed Rule

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9904

Cost Accounting Standards: Harmonization of Cost Accounting Standards 412 and 413 With the Pension Protection Act of 2006

AGENCY: Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board (Board).

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board (Board), invites public comments concerning the harmonization of Cost Accounting Standards 412 and 413 with the Pension Protection Act (PPA) of 2006. The PPA amended the minimum funding requirements for defined benefit pension plans. The PPA required the Board to harmonize with PPA the CAS applicable to the Government reimbursement of the contractor's pension costs. The Board has proposed several changes to harmonize CAS with PPA, including the recognition of a "minimum actuarial liability" consistent with the PPA minimum required contribution. The proposed CAS changes will lessen the difference between the amount of pension cost reimbursable to the contractor in accordance with CAS and the amount of pension contribution required to be made by the contractor as the plan sponsor by PPA.

DATES: Comments must be in writing and must be received by the July 9, 2010.

ADDRESSES: All comments to this Notice of Proposed Rulemaking (NPRM) must be in writing. You may submit your comments via U.S mail. However, due to delays in the receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Electronic comments may be submitted in any one of three ways:

- *Federal eRulemaking Portal:* Comments may be directly sent via *http://www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type "CAS Pension Harmonization NPRM" (without quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments.
- *E-mail:* Comments may be included in an e-mail message sent to *casb2@omb.eop.gov.* The comments may be submitted in the text of the e-mail message or as an attachment;
- *Facsimile:* Comments may also be submitted via facsimile to (202) 395–5105; or
- *Mail:* If you must submit your responses via regular mail, please mail them to: Office of Federal Procurement Policy, 725 17th Street, NW., Room 9013, Washington, DC 20503, *Attn:* Raymond J. M. Wong. Be aware that due to the screening of U.S. mail to this office, there will be several weeks delay in the receipt of mail. Respondents are strongly encouraged to submit responses electronically to ensure timely receipt.

Be sure to include your name, title, organization, postal address, telephone number, and e-mail address in the text of your public comment and reference "CAS Pension Harmonization NPRM" in the subject line. Comments received by the date specified above will be included as part of the official record.

Please note that all public comments received will be available in their entirety at *http://www.whitehouse.gov/omb/casb_index_public_comments/* and *http://www.regulations.gov* after the close of the comment period.

For the convenience of the public, a copy of the proposed amendments to Cost Accounting Standards 412 and 413 shown in a "line-in/line-out" format is available at: *http://www.whitehouse.gov/omb/procurement_casb_index_fedreg/* and *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eric Shipley, Project Director, Cost Accounting Standards Board (*telephone:* 410–786–6381).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

Rules, Regulations and Standards issued by the Cost Accounting Standards Board (Board) are codified at 48 CFR Chapter 99. The Office of Federal Procurement Policy Act, 41 U.S.C. 422(g), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard (CAS or Standard), complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard, the Staff Discussion Paper (SDP).
2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).
3. Promulgate a Notice of Proposed Rulemaking (NPRM).
4. Promulgate a Final Rule.

This NPRM is step three of the four-step process.

B. Background and Summary

The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board, is today releasing a Notice of Proposed Rulemaking (NPRM) on the harmonization of Cost Accounting Standards (CAS) 412 and 413 with the Pension Protection Act (PPA) of 2006 (Pub. L. 109–280, 120 Stat. 780). The Office of Procurement Policy Act, 41 U.S.C. 422(g)(1), requires the Board to consult with interested persons concerning the advantages, disadvantages, and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard prior to the promulgation of any new or revised CAS.

The PPA amended the minimum funding requirements for, and the tax-deductibility of contributions to, defined benefit pension plans under the Employee Retirement Income Security Act of 1974 (ERISA). Section 106 of the PPA requires the Board to revise Standards 412 and 413 of the CAS to harmonize with the amended ERISA minimum required contribution.

In addition to the proposed changes for harmonization, the Board has proposed several technical corrections to cross references and minor inconsistencies in the current rule. These technical corrections are not intended to change the meaning or provisions of CAS 412 and 413 as currently published. The technical corrections for CAS 412 are being made to paragraphs 9904.412–30(a)(1) and (9), paragraphs 9904.412–50(c)(1), (2) and (5), and paragraph 9904.412–60(c)(13). In CAS 413, the technical corrections are being made to paragraph 9904.413–30(a)(1), subsection 9904.413–40(c), and paragraphs 9904.413–50(c)(1)(i) and 9904.413–60(c)(12).

Prior Promulgations

On July 3, 2007, the Board published a Staff Discussion Paper (SDP) (72 FR 36508) to solicit public views with respect to the Board's statutory requirement to "harmonize" CAS 412 and 413 with the PPA. Differences between CAS 412 and 413 and the PPA, as well as issues associated with pension harmonization, were identified in the SDP. Respondents were invited to

identify and comment on any issues related to pension harmonization that they felt were important. The SDP reflected research accomplished to date by the staff of the Board, and was issued by the Board in accordance with the requirements of 41 U.S.C. 422(g). The SDP identified issues related to pension harmonization and did not necessarily represent the position of the Board.

The SDP noted basic conceptual differences between the CAS and the PPA that affect all contracts and awards subject to CAS 412 and 413. The PPA utilizes a settlement or liquidation approach to value pension plan assets and liabilities, including the use of accrued benefit obligations and interest rates based on current corporate bond rates. On the other hand, CAS utilizes the going concern approach to plan asset and liability valuations, *i.e.,* assumes the company (or in this case the pension plan and trust) will continue in business, and follows accrual accounting principles that incorporate long-term, going concern assumptions about future asset returns, future years of employee service, and future salary increases. These assumptions about future events are absent from the settlement approach utilized by PPA.

On September 2, 2008, the Board published the Advance Notice of Proposed Rulemaking (ANPRM) (73 FR 51261) to solicit public views with respect to the Board's statutory requirement to "harmonize" CAS 412 and 413 with the PPA. Respondents were invited to comment on the general approach to harmonization and the proposed amendments to CAS 412 and 413. The ANPRM reflected public comments in response to the SDP and research accomplished to date by the staff of the Board, and was issued by the Board in accordance with the requirements of 41 U.S.C. 422(g).

Because of the complexity and technical nature of the proposed changes, many respondents asked that the Board extend the comment period to permit submission of additional or supplemental public comments. On November 26, 2008, the Board published a notice extending the comment period for the ANPRM (73 FR 72086).

The ANPRM proposed nine general changes to CAS 412 and 413 that were intended to harmonize the CAS with the PPA minimum required contributions while controlling cost volatility between periods. The primary changes proposed by the ANPRM were the recognition of a "minimum actuarial liability," special recognition of "mandatory prepayment credits," an accelerated gain and loss amortization, and a revision of the assignable cost limitation. Other proposed changes addressed the PPA's mandatory cessation of benefit accruals for severely underfunded plans, the projection of flat dollar benefits, recognition of accrued contribution values on a discounted basis, and interest on prepayments credits and prior period unfunded pension costs. The final category of proposed changes provided for a phased-in transition of the amendments to mitigate the initial increase in contract price.

Public Comments

The Board received 17 public comments and 2 supplemental public comments to the ANPRM, including the extension period. These comments came from contractors, industry associations, Federal agencies, and the actuarial profession. The Board appreciates the efforts of all parties that submitted comments, and found their depth and breadth to be very informative. A brief summary of the comments follows in Section C—Public Comments to the ANPRM.

The NPRM reflects public comments in response to the ANPRM, as well as to research accomplished to date by the staff of the Board in the respective subject areas, and is issued by the Board in accordance with the requirements of 41 U.S.C. 422(g).

Conclusions

The Board continues to believe that the accounting for pension costs for Government contract costing purposes should reflect the long-term nature of the pension plan for a going concern. As discussed in the ANPRM, the Cost Accounting Standards are intended to provide cost data not only to determine the incurred cost for the current period, but also to provide consistent and reasonable cost data for the forward-pricing of Government contracts over the near future. Financial statement accounting, on the other hand, is intended to report the change in an entity's financial position and results of operations during the current period. ERISA does not prescribe a unique cost or expense for a period. The minimum required contribution rules of ERISA, as amended by the PPA, instead require that the plan achieves funding of its current settlement liability within a relatively short period of time. On the other hand, the ERISA tax-deductible maximum contribution is based on the plan's long-term benefit levels plus a reserve against adverse experience. ERISA permits a wide contribution range that allows the company to establish long-term financial management decisions on the funding of the ongoing pension plan.

The Board recognizes that contract cost accounting for a going concern must address the risks to both the contractor and the Government that are associated with inadequate funding of a plan's settlement liability. The NPRM therefore proposes implementation of a minimum actuarial liability and minimum normal cost that is based on currently accrued benefits that have been valued using corporate bond rates. Furthermore, recognition of the minimum actuarial liability and normal cost that are consistent with the basis for the ERISA "funding target" and "target normal cost," will alleviate the disparity between the CAS assigned cost and ERISA's minimum required contribution. Once harmonization is achieved, maintaining the going concern basis for contract costing allows contractors to set long-term funding goals that avoid undue cost or contribution volatility.

The Board agrees with the public comments that since the general approach to harmonization is tied to the minimum actuarial liability, the recognition proposed in the ANPRM for post harmonization "mandatory" prepayment credits was unnecessary and overly complex. In reviewing the proposed treatment of mandatory prepayments, the Board noted that because the normal cost and actuarial accrued liability have been harmonized with the minimum actuarial liability and minimum normal cost, providing for supplemental recognition of the mandatory prepayment credits would overstate the appropriate period cost. The NPRM does not include any special recognition of mandatory prepayment credits.

The Board continues to believe that issues of benefit design, investment strategy, and financial management of the pension plan fall under the contractor's purview. The Board also believes that the Cost Accounting Standards must remain sufficiently robust to accommodate evolving changes in financial accounting theory and reporting as well as Congressional changes to ERISA.

After considering the effects of accelerating the recognition of actuarial gains and losses and to provide more timely adjustment of plan experience without introducing unmanageable volatility, the NPRM proposes changing the amortization period for gains and losses to a 10-year amortization period from its current 15-year period. This shorter amortization period more closely follows the 7-year period

required by ERISA to fully fund the plan's settlement liability.

The Board believes the 10-year minimum amortization period, including the required amortization of any change in unfunded actuarial liability due to switching from the actuarial accrued liability to the minimum actuarial liability, or from the minimum actuarial liability back to the actuarial accrued liability, provides sufficient smoothing of costs to reduce volatility. Therefore, the NPRM does not include any assignable cost limitation buffer. Under the NPRM, once the assignable cost limitation is exceeded, the assigned pension cost continues to be limited to zero.

The Board proposes a specific transition method for implementing harmonization and moderating its cost effects. The proposed 5-year transition method will phase-in the recognition of any adjustment of the actuarial accrued liability and normal cost. This transition method would apply to all contractors subject to CAS 412 and 413.

Benefits

The proposed rule of this NPRM harmonizes the disparity between the PPA minimum contribution requirements and Government contract costing. The proposed rule should provide relief for the contractors' concerns with indefinite delays in recovery of cash expenditures while mitigating the expected pension cost increases that will impact Government and contractor budgets. The proposed rule should also reduce cost volatility between periods and thereby enhance the budgeting and forward pricing process. This will assist in meeting the uniformity and consistency requirements described in the Board's Statement of Objectives, Policies and Concepts (57 FR 31036), July 13, 1992).

The NPRM allows companies to use the same actuarial methods and valuation software for ERISA, financial statements, and Government contract costing purposes. Except for the interest rate, the same general set of actuarial assumptions can be used for all three purposes. This will allow Government agencies and auditors to place reliance on data from ERISA and financial statement valuations while allowing contractors to avoid unnecessary actuarial effort and expense.

Goals for Harmonization

This proposed rule is based upon the following goals for achieving pension harmonization and transition that the Board established in the ANPRM and reaffirms in this NPRM:

(1) Harmonization Goals

(a) Minimal changes to CAS 412 and 413.

(b) No direct adoption of ERISA as amended by the PPA, to avoid any change to contract cost accounting without prior CAS Board approval since Congress will amend ERISA in the future.

(c) Preserve matching of costs with causal/beneficial activities over the long-term.

(d) Mitigate volatility (enhance predictably).

(e) Make "user-friendly" changes (avoid complexity to the degree possible).

(2) Goals for Transition to Harmonization

(a) Minimize undue immediate impact on contract prices and budgets.

(b) Transition should work for contractors with either CAS or FAR covered contracts.

Summary Description of Proposed Standard

The primary proposed harmonization provisions are self-contained within the "CAS Harmonization Rule" at 9904.412–50(b)(7). This structure eliminates the need to revise many long-standing provisions and clearly identifies the special accounting required for harmonization. Proposed revisions to other provisions are necessary to harmonization and mitigate volatility. This proposed rule makes general changes to CAS 412 and 413 that are intended to harmonize the CAS with the PPA minimum required contributions while controlling cost volatility between periods. These general changes are:

(1) Recognition of a "minimum actuarial liability." CAS 412 and 413 continue to measure the actuarial accrued liability and normal cost based on long-term, "best-estimate" actuarial assumptions, projected benefits, and the contractor's established immediate gain actuarial cost method. However, in order to ensure that the measured costs recognize the settlement liability and normal cost as minimum values, the proposed rule requires that the measured pension cost must be re-determined using the minimum actuarial liability and minimum normal cost if the criteria of all three (3) "triggers" set forth in the CAS Harmonization Rule are met.

(i) If the minimum required amount exceeds the pension cost measured without regard to the minimum liability and minimum normal cost, then the contractor must determine which total period liability, *i.e.,* actuarial liability plus normal cost, must be used;

(ii) If the sum of the minimum actuarial liability plus the minimum normal cost measured on a settlement basis exceeds the sum of actuarial accrued liability plus normal cost measured on a long-term basis, then the contractor must re-measure the pension cost for the period using the minimum actuarial liability and minimum normal cost; and

(iii) If pension cost re-measured using the minimum actuarial liability and minimum normal cost exceeds the pension cost originally measured using the actuarial accrued liability and normal cost, then the re-measured pension cost is used for the assignment and allocation of pension costs for the period. Furthermore, the minimum actuarial liability and minimum normal costs are used for all purposes of measurement, assignment, and allocation under CAS 412.

The minimum actuarial liability definition is consistent with the PPA funding target and the Statement of Financial Accounting Standard No. 87 (FAS 87) "accumulated benefit obligation." The minimum normal cost is similarly defined to be consistent with the FAS 87 service cost (without salary projection) and the PPA target normal cost.

The proposed rule does not require a change to the contractor's actuarial cost method used to compute pension costs for CAS 412 and 413 purposes. Therefore, any change in actuarial cost method, including a change in asset valuation method, would be a "voluntary" change in cost accounting practice and must comply with the provisions of CAS 412 and 413.

(2) Accelerated Gain and Loss Amortization. The proposed rule accelerates the assignment of actuarial gains and losses by decreasing the amortization period from fifteen to ten years. This accelerated assignment will reduce the delay in cost recognition and is consistent with the shortest amortization period permitted for other portions of the unfunded actuarial liability (or actuarial surplus).

(3) Revision of the Assignable Cost Limitation. The proposed rule does not change the basic definition of the assignable cost limitation and continues to limit the assignable cost to zero if assets exceed the actuarial accrued liability and normal cost. Under the proposed rule, the actuarial accrued liability and normal cost used to determine the assignable cost limitation are adjusted for the minimum values if applicable.

(4) Mandatory Cessation of Benefit Accruals. This proposed rule will exempt any curtailment of benefit

accrual required by ERISA from immediate adjustment under CAS 413–50(c)(12). Voluntary benefit curtailments will remain subject to immediate adjustment under CAS 413–50(c)(12). A new subparagraph has been added to CAS 413–50(c)(12) that addresses the accounting for the benefit curtailment or other segment closing adjustment in subsequent periods.

(5) Projection of Flat Dollar Benefits. The proposed amendments will allow the projection of increases in specific dollar benefits granted under collective bargaining agreements. The recognition of such increases will place reliance on criteria issued by the Internal Revenue Service (IRS). As with salary projections, the rule will discontinue projection of these specific dollar benefit increases upon segment closing, which uses the accrued benefit cost method to measure the liability.

(6) Asset Values and Present Value of Contributions. For nonqualified defined benefit plans, the proposed rule discounts contributions at the long-term interest assumption from the date paid, even if made after the end of the year. For qualified defined benefit plans, this proposed rule would accept the present value of accrued contributions and the market value (fair value) of assets recognized for ERISA purposes. Using the ERISA recognition of accrued contributions in determining the market value of assets will avoid unexpected anomalies between ERISA and the CAS, as well as support compliance and audit efforts. The market and actuarial values of assets should include the present value of accrued contributions.

(7) Interest on Prepayments Credits. Funding more than the assigned pension cost is often a financial management decision made by the contractor, although funding decisions must consider the minimum funding requirements of ERISA. Since all monies deposited into the funding agency share equally in the fund's investment results, the prepayment is allocated a share of the investment earnings and administrative expenses on the same basis as separately identified segment assets. This recognition ensures that any investment gain or loss attributable to the assets accumulated by prepayments does not affect the gains and losses of the plan or any segments. The decision or requirement to deposit funds in excess of the assigned cost should have a neutral impact on Government contract costing.

(8) Interest on Unfunded Pension Costs. Funding less than the assigned pension cost is a financial management decision made by the contractor. The unfunded cost cannot be reassigned to current or future periods and must be separately identified and tracked in accordance with 9904.412–50(a)(2). Because there are no assets associated with these unfunded accruals, the Board believes that these amounts should not create any investment gain or loss. The proposed rule reaffirms that the accumulated value of unfunded accruals is adjusted at the long-term interest assumption and clarifies that the settlement interest rate based on corporate bond yields does not apply.

(9) Required Amortization of Change in Unfunded Actuarial Liability due to Recognition of Minimum Actuarial Liability Mitigates Initial Increase in Contract Price. The proposed rule explicitly requires that the actuarial gain or loss, due to any difference between the expected and actual unfunded actuarial liability caused by the recognition of the minimum actuarial liability, be amortized over a 10-year period along with actuarial gain or losses from all other sources. This amortization process will limit the immediate effect on pension costs when the Harmonization Rule becomes applicable and thereby mitigates the impact on existing contracts subject to these Standards.

There are two other important features included in this proposed rule.

(1) Transition Phase-In of Minimum Actuarial Liability and Minimum Normal Cost Mitigates Initial Increase in Contract Price. To allow time for agency budgets to manage the possible increase in Government contract costs and to mitigate the impact on existing contracts for both the Government and contractors, the changes to CAS 412 and 413 are phased-in over a 5-year period that approximates the typical contracting cycle. The proposed phase-in allows the cost impact of this draft proposal to be gradually recognized in the pricing of CAS-covered and FAR contracts alike. Any adjustment to the actuarial accrued liability and normal cost based on recognition of the minimum actuarial liability and minimum normal cost will be phased in over a 5-year period at 20% per year, *i.e.,* 20% of the difference will be recognized the first year, 40% the next year, then 60%, 80%, and finally 100% beginning in the fifth year. The phase-in of the minimum actuarial liability also applies to segment closing adjustments.

(2) Extended Illustrations. Many existing illustrations have been updated to reflect the proposed changes to CAS 412 and 413. To assist the contractor with understanding how this proposed rule would function, extensive examples have been included in a new Section 9904.412–60.1, Illustrations—CAS Harmonization Rule. This section presents a series of illustrations showing the measurement, assignment and allocation of pension cost for a contractor with an under-funded segment, followed by another series of illustrations showing the measurement, assignment and allocation of pension cost for a contractor with an over-funded segment. The actuarial gain and loss recognition of changes between the long-term liability and the settlement liability bases are illustrated in 9904.412–60.1(h). This structural format differs from the format for 9904.412–60.

The Board realizes that these examples are longer than the typical example in the Standards, but believes that providing comprehensive examples covering the process from measurement to assignment and then allocation will demonstrate how the proposed harmonization is integrated into the existing rule.

C. Public Comments to the Advance Notice of Proposed Rulemaking

The full text of the public comments to the ANPRM is available at: *http://www.whitehouse.gov/omb/casb_index_public_comments/* and *http://www.regulations.gov.*

Summary of Public Comments

The public comments included a broad range of views on how to harmonize CAS with the PPA. At one extreme, one commenter believed that the Board should do nothing as the existing CAS rules are already harmonized with the PPA. At the other extreme, others believed that CAS 412 and 413 should be amended to adopt the actuarial assumptions and measurement techniques used to determine the PPA minimum required contribution. In any case, there was overall consensus that any amendments to CAS 412 and 413 should apply to all contractors with Government contracts subject to CAS 412 and 413.

Most of the public comments expressed concern that the disparity between CAS and the PPA has the potential to cause extreme cash flow problems for some Government contractors. Many commenters believed that the ERISA minimum required contribution must be recognized in contract costing on a timely basis. Industry and professional groups generally agreed that Section 106 of the PPA requires CAS 412 and 413 to be revised to harmonize with the PPA minimum required contribution. However, there were varying views on how to best accomplish that goal. Many commenters suggested that the Board

seize the opportunity offered by harmonization to bring the CAS rules more in line with the evolving views of financial statement disclosure of pension obligations, minimum funding adequacy to protect the plan participants and the Pension Benefit Guarantee Corporation (PBGC), and financial economics regarding the appropriate use of corporate resources and shareholder equity. Rather than merely amend the existing rules, the public comments suggested that a fresh look should be taken by the Board to balance and reconcile the competing interests of stakeholders and the intent of the various statutes.

Others argued that there is no mandate for the Board to address any issue beyond the PPA minimum required contribution. These commenters believed that any other issues should be addressed by the Board in a separate case. There was no consensus on how far the Board should go beyond the requirement to merely harmonize CAS with the PPA minimum required contribution, *e.g.,* should the Board also consider the PPA's revisions to the maximum tax deductible limits.

For the most part, industry comments supported adoption of the PPA minimum funding provisions including the provisions related to "at-risk" plans. They believe that directly adopting the PPA minimum funding provisions will preserve the equitable principle of the CAS whereby neither contractors nor Government receives an unfair advantage. They expressed concern that if the Board does not fully adopt the PPA minimum funding provisions, the Government will have an unfair advantage because the PPA compels the contractors to incur a higher cost than they can allocate to Government contracts and recover currently, thus, creating negative corporate cash flow. They noted that although the prepayment provision in the current CAS is meant to mitigate this situation, the cost methodology under the PPA is so radically different that the prepayment provision in CAS 412 has negligible impact in providing timely relief to the contractor from this negative cash flow.

The views of one Federal agency on harmonization differed from those of industry and opined that no revision to CAS was necessary to harmonize with the PPA. This commenter argued that: (i) Harmony is already achieved through prepayments credits; (ii) adopting the PPA funding rules will run counter to uniform and consistent accounting; (iii) adopting the PPA requirements weakens the causal/beneficial relationship between the cost and cost objective; and, (iv) adopting the PPA requirements will increase cost volatility. The commenter expressed its belief that the purposes of the PPA, which are to better secure pension benefits and promote solvency of the pension plan, are different than the purposes of CAS. They also believed that since CAS does not undermine the purposes of the PPA the two are already in harmony.

This summary of the comments and responses form part of the Board's public record in promulgating this case and are intended to enhance the public's understanding of the Board's deliberations concerning Pension Harmonization.

Abbreviations

Throughout the public comments there are the following commonly used abbreviations:

- AAL—Actuarial Accrued Liability, usually used to denote the liability measured using long-term assumptions;
- ACL—Assignable Cost Limitation;
- ERISA—The Employees' Retirement Security Income Act of 1974, as amended to date;
- MAL—Minimum Actuarial Liability, usually used to denote the liability measured using interest based on current period settlement rates;
- MNC—Minimum Normal Cost, usually used to denote the normal cost measured using interest based on current period settlement rates;
- MPC—Mandatory Prepayment Credit, which was a term used in the ANPRM;
- MRC—Minimum Required Contribution, which is the contribution necessary to satisfy the minimum funding requirement of ERISA for continued plan qualification; and
- NC—Normal Cost, usually used to denote the normal cost measured using long-term assumptions.

Responses to Specific Comments

Topic A: Proposed Approach to Harmonization. The principle elements for harmonization that were proposed in the ANPRM are:

a. Continuance of the development of the CAS assigned pension cost on a long-term, going concern basis;

b. Implementation of a minimum liability "floor" based on the plan's current settlement liability in the computation of the assigned cost for a period;

c. Acceleration of the gain and loss amortization from 15 to 10 years;

d. Recognition of established patterns of increasing flat dollar benefits;

e. Adjusting prepayment credits based on the rate of return on assets; and

f. Exemption of mandated benefit curtailments.

Comments: The majority of commenters found that the ANPRM presented a fair and reasonable approach to harmonization. The commenters submitted many detailed comments on improvements to specific provisions as well as some additional provisions they believed might be useful. Some commenters remarked that the extensive explanation of the reasoning behind the Board's approach to harmonization enhanced their understanding of the ANPRM.

As one commenter wrote:

We appreciate the effort put forth by the CAS Board and Staff to study the issues and publish this ANPRM. The task of harmonization is challenging and technically complicated. The harmonization of CAS needs to respect the cash contribution requirements mandated by the PPA, but it should be done in a way that best allows both contractors and the government to budget for that cost and for the contractors to recover that cost. The ANPRM provides an excellent framework for developing revisions to the CAS in order to satisfy the requirements for harmonization with PPA. However, we believe that there are several areas where changes to the ANPRM would offer significant improvement toward meeting the objective of harmonization.

Another public comment read:

We commend the CAS Board for addressing the complex issues concerning harmonizing pension costs under the CAS 412/413 requirements with the minimum funding requirements under the Pension Protection Act (PPA) of 2006. We believe the ANPRM reflects an excellent approach for addressing these important issues.

Commenting on the proposed approach and preamble explanation, a commenter remarked:

Although the ANPRM does not establish as much commonality between the building blocks underlying the CAS cost and ERISA minimum funding requirements as we would have preferred, the explanation of the Board's reasoning was quite helpful. In our view, the ANPRM provides a reasonable framework for the necessary revisions to CAS 412 and 413.

Response: The majority of commenters found that the ANPRM presented a fair and reasonable approach to harmonization, and therefore this NPRM is being proposed based upon the general concepts of the ANPRM. In drafting this NPRM the Board has considered many detailed suggestions concerning improvements to specific provisions and additional provisions as submitted by the commenters. Because of the technical nature of this proposed rule, the Board is again providing explanations of the reasoning for any changes from the ANPRM.

The Board discussed the move towards fair value accounting by generally accepted accounting

principles (GAAP) and ERISA versus the CAS goal of accounting on long-term, "going concern" basis. The Board reaffirmed its desire to retain the "going concern" basis and use long-term expectations to value pension liabilities—this recognizes the long-term relationship between the Government and most contractors. The long-term, "going concern" basis serves to dampen volatility and thereby enhances forward pricing—a function that is unique to the CAS.

The Board also believes that the minimum liability approach is the highest extent of change which is academically/theoretically defensible and consistent with the Board's Statement of Objectives, Principles and Concepts.

Topic B: Supports Comments Submitted by AIA/NDIA, Some Have Supplemental Comments.

Comments: Seven (7) of the contractors submitting comments also stated that they support the comments submitted by industry associations. Several of these commenters also stated their comments augmented the industry associations.

Response: The Board has given full attention to the comments submitted by AIA/NDIA because of their general support by other commenters, and because their very detailed comments and proposed revisions reflect thoughtfulness and appreciation for the special concerns of contract cost accounting.

Topic C: General Comments on Differences between CAS, GAAP and ERISA (PPA). The SDP and ANPRM discussed the similarities and distinctions between the goals and measurement criteria of CAS, GAAP and ERISA. The unique purpose and goal of the CAS was determinative of the Board's proposed harmonization approach.

Comments: Several Commenters noted that ERISA, as amended by the PPA, is intended to promote adequate funding of the currently accrued pension benefit and set reasonable limits on tax deductibility. These commenters remarked that the PPA minimum contribution is designed to fully fund the current settlement liability of a plan within 7 years in order to protect the participants' accrued benefit and to limit risk to the PBGC.

As one commenter explained:

> The PPA was enacted, in part, as a response to the failure of companies with severely underfunded qualified defined benefit pension plans ("pension plans"), even though companies had typically contributed at least the minimum amount required under the Internal Revenue Service ("IRS") rules. PPA was designed to ensure that corporations would fund towards liabilities measured on more of a settlement basis over a 7-year period, so that plans would be less likely to be severely underfunded.

They remarked that GAAP has adopted fair value accounting, also known as "mark-to-market" accounting. The purpose of GAAP is to disclose the current period pension expense based on the current period's environment, including the volatility associated with a changing environment. Another primary concern of GAAP is disclosing the risk associated with the funding of the current settlement liability to users of financial statement.

Two commenters reminded the Board that the purpose of CAS is (i) consistency between periods and (ii) uniformity between contractors. Unlike ERISA and GAAP, CAS is concerned with the cost data used to price contracts over multiple periods. The CAS continues to be concerned with the Government's participation in the funding of the long-term pension liability via a continuing relationship (going concern) with the contractor.

One of these commenters felt that use of the PPA and GAAP interest assumption and cost method used to determine the liability and normal cost for CAS measurements would enhance uniformity between contractors. This commenter also believes that 10-year amortization of gains and losses and the amortization of mandatory prepayment credits would sufficiently mitigate any excessive volatility and therefore not harm consistency between periods. Finally, this commenter suggested that adoption of the PPA interest assumption and cost method would alleviate the need to have the complex mandatory prepayment reconciliation rules. Moreover, if the CAS values were based on fair value accounting used by ERISA and GAAP, the Government would be able to place reliance on measurements that were subject to independent review.

As this commenter articulated these concerns:

> The proposed rule relies on the same fundamental approach for measuring pension liabilities that has been in effect since the CAS pension rules were first adopted in 1975. The CAS allows a contractor to choose between several actuarial cost methods and requires that the discount rate represent the expected long-term rate of return on plan assets. Although the CAS measurement basis was once consistent with the methods and assumptions in common use, this is no longer the case. In 1985, the Financial Accounting Standards (FAS) were modified to require that pension costs for financial reporting purposes be calculated using the projected unit credit (PUC) cost method and a discount rate that reflects the rates of return currently available on high-quality corporate bonds of appropriate duration. In 2006, the Employee Retirement Income Security Act (ERISA) was amended by the PPA to require the use of durational discount rates that are determined in a manner consistent with the FAS. The PPA also requires all plans to use the unit credit cost method (PUC without projection) to determine minimum funding, and the PUC method to determine the maximum tax deductible contribution.
>
> These are material conflicts with the CASB objectives. We see no way to resolve the conflicts except to modify the CAS to require pension liabilities to be determined in a manner consistent with the measurements used for both ERISA and financial reporting. Specifically, the CAS should require the use of (i) the PUC cost method, and (ii) a discount rate that reflects the rates of return currently available on high-quality corporate bonds of appropriate duration. These changes would also improve consistency between contractors, a primary objective of the CAS.

Response: The goal of the ANPRM was to maintain predictability for cost measurement and period assignment while providing for reconciliation, *i.e.,* recovery of required contributions within a reasonable timeframe. The divergence of GAAP and ERISA from CAS is primarily due to the adoption of "mark-to-market" cost measurement, which can be disruptive to the contract costing/pricing process.

The Board remains cognizant of the following key distinctions between ERISA, GAAP and CAS regarding funding of the pension cost:

- ERISA's minimum funding is concerned with the funding of the current settlement liability.
- GAAP is not concerned with funding, but rather with the disclosure of the results of operations in the current market environment.
- CAS continues to be concerned with the Government's participation in the funding of the long-term pension liability via a continuing (going concern) relationship with the contractor. CAS 412 and 413 are used to develop data for forward pricing over multiple years, and is not just concerned with the current environment.

The Board wishes to retain the contractor's flexibility to choose the actuarial cost method it deems most appropriate for its unique pension plan. While the CAS permits the use of any immediate gain cost method, most contractors already use the projected unit cost method, which is required by ERISA and GAAP and compliant with CAS 9904.412–40(b)(1). As long as the current CAS permits the use of methods required by the PPA there is no reason to revise the CAS to be more restrictive. Furthermore, the Board notes that for

CAS purposes a contractor may use the same actuarial cost method and assumptions, except for the long-term interest assumption, as used to value a plan under PPA that is not "At Risk." (With the passage of the PPA, ERISA no longer computes liabilities and normal costs using long-term interest assumptions.)

The Board believes that the proposed 10-year amortization of the gains and losses will sufficiently harmonize CAS with the PPA while provide acceptable smoothing of costs between most periods. The Board notes that the plunge in stock market values in the latter half of 2008 demonstrates how quickly things can change between periods, but remains confident that the aberrant market losses for 2008 and early 2009 will be adequately smoothed using 10 versus 15 years.

Topic D: Tension between Verifiability and Predictability.

Comments: One commenter also raised the issue of verifiability, writing:

> In 1992, the CASB released a *Statement of Objectives, Policies, and Concepts,* which cites two primary goals for cost accounting standards: (i) Consistency between contractors, and (ii) consistency over time for an individual contractor. It also sets forth other important criteria to be taken into consideration. Verifiability is described as a key goal for any cost accounting standard, as is a reasonable balance between a standard's costs and benefits. We believe that the liability measurement basis under the proposed rule severely conflicts with these goals.

This commenter was concerned that verifiability of the liability and cost data might be compromised or lost since the GAAP expense and ERISA contributions are no longer based on a long-term, "going concern" concept. This commenter also was concerned with the added expense of producing such numbers and the potential for disputes. This commenter stated:

> The pension liabilities used to develop contract costs must be verifiable. If the data used for contract costs are not reconcilable with the data used for other reporting purposes, the information will be open to bias and manipulation.
>
> Similarly, if the pension liabilities determined in accordance with the CAS are inconsistent with those used for other purposes, there will be no alternative source from which to obtain this information. We have encountered many situations in which a contractor was not aware of the requirement to compute a special cost for contract reimbursement or did not maintain the CAS information required for audit or segment closing calculation. In these cases, ERISA reports or financial statements were used to obtain the necessary liability information, and the CAS computations could be reconstructed. The data required under the proposed rule are obsolete for other reporting purposes and will not be available if the calculations required under the CAS are not performed, or if the documentation is not retained. It will be difficult or impossible to develop reliable estimates from existing sources of data.

This commenter was also concerned that actuaries of medium-sized contractors may not be sufficiently familiar with the CAS rules, and some of the younger practitioners may not be that familiar with the concepts of long-term measurement methods. On occasion, the plan's actuary may not be aware that his client has Government contracts and therefore the required valuation data may not be produced.

Conversely, another commenter was receptive to use of the fair market accounting liability as a minimum liability, but was concerned that introduction of the current liability minimum might cause the CAS to diverge from its long-standing goal of "predictability." This commenter wrote:

> Because the proposed rule contains many technical and actuarial provisions, I am concerned that the basic purpose of CAS, which differs from those of other accounting standards and rules, may be lost in the details.

This commenter said that the Board should not lose sight of predictability (consistency between periods). Focusing on uniformity between contractors, which is a concern of GAAP, might come at the expense of predictability and harm the pricing function. This commenter opines:

> The CAS has been, and I agree the CAS should continue to be, concerned with predictably (minimal volatility) across cost accounting periods to support the estimating, accumulating and reporting of costs for flexibly and fixed price contracts. Fair value accounting of the liability (also called "mark-to-market" accounting) may be appropriate for financial disclosure purposes under GAAP, but is inappropriate and disruptive of the contract costing function. Likewise, ERISA's mandates and limits for current period funding are inappropriate for cost predictability and stability across periods.
>
> I fully support the following goals for pension harmonization as stated in the paragraph entitled "(1) Harmonization Goals" of the Board's ANPRM:
>
> (b) No direct adoption of the Employee Retirement Income Security Act of 1974, (ERISA) as amended by the Pension Protection Act (PPA), to avoid any change to contract cost accounting without prior CAS Board approval since it is quite likely that Congress will amend ERISA in the future.
>
> (c) Preserve matching of costs with causal/beneficial activities over the long-term.
>
> (e) Mitigate volatility (enhance predictably).

This commenter also remarked that balancing the tension between ERISA and the CAS has long been a concern of the Board, writing as follows:

> Harmonization is not a new subject to the CAS Board. Even in the early 1990s the matching of ERISA funding and contract cost accruals was of concern to the staff. The SDP continues:
>
> The costing and pricing of Government contracts also requires a systematic scheme for accruing pension cost that precludes the arbitrary assignment of costs to one fiscal period rather than another to gain a pricing advantage. The Government also has sensitivity to the inclusion of unfunded pension costs in contract prices. Conversely, the staff's research revealed one instance of a contractor who, due to the shortened amortization periods now contained in the Tax Code, faced minimum ERISA funding requirements in excess of the CAS 412 pension cost and, thus could not be reimbursed. That particular contractor felt, understandably, that allowability ought to be tied to funding under the Tax Code. Obviously, given the current tax law climate regarding full funding, complete realization of all of these goals is not achievable. In the staff's opinion, the goals of predictable and systematic accrual outrank that of funding. However, funding still remains an important consideration.

Response: The Board recognizes that there is a tension between the benefits of verifiability, *i.e.,* reliance on outside audited data, and predictability, *i.e.,* stability or at least minimized volatility. Most of the commenters expressed positive opinions concerning the general approach of the ANPRM and do not seem overly concerned with the verifiability issue. Verifiability is always an audit issue and will remain a consideration as the Board proceeds.

Contractors are required to provide adequate documentation to support all cost submissions, including pension costs. Furthermore, the American Academy of Actuaries' "Qualification Standards for Actuaries Issuing Statements of Actuarial Opinion in the United States" expressly requires actuaries to be professionally qualified and adhere to CAS 412 and 413—Actuarial communications and opinions regarding CAS 412 and 413 are recognized as "Statements of Actuarial Opinion." Paragraph 3.3.3 of Actuarial Standards of Practice No. 41 requires actuaries to provide information that is sufficient for another actuary, qualified in the same practice area, to make an objective appraisal of the reasonableness of the actuary's work as presented in the actuary's report.

As discussed above, since a contractor may use for CAS the same actuarial cost method and assumptions, except for the long-term interest assumption, as used for valuing a plan under PPA that is not "At Risk," there is a commonality to the values measured for CAS and PPA. There will some additional effort expended since the contractor and its

actuary will have to reconcile the liability and normal cost measured under different interest rates. However demonstrating the difference caused by the change of a single variable should not impose an undue burden or expense.

Topic E: CAS 412.40(b)(3)(ii) Harmonization Rule's Minimum Actuarial Liability Interest Rate Assumption.

Comments: Most commenters asked that the rule clearly identify the allowable basis for the interest rate used to measure the MAL. Some asked that a particular basis for the rate be stated or permitted, *i.e.,* PPA or FAS 87as a "safe harbor". PPA allows some leeway and therefore one commenter said that it was not clear as to the date the current bond rate would be measured. Others believed that the MAL should be based on a long-term assumed rate for corporate bonds, instead of the current PPA rate, in order to reduce volatility and enhance forward pricing.

One commenter asked that the rule permit the use of a single interest rate for the plan rather than separate rates by PPA segment or full yield curve. Another commenter asked that the Board provide examples illustrating selection and use of the interest rate.

The following captures the theme of many comments submitted:

* * * First, our comments regard the Interest Rate used for the Minimum Actuarial Liability (MAL) and Minimum Normal Cost (MNC). We believe the flexibility provided by using "the contractors' best estimate" for selecting the source of the interest rate used in the calculation of the MAL and MNC is desirable to achieve a meaningful measure of the resulting pension cost for each contractor. However, we have concerns that the criteria for the acceptable rates as written are sufficiently unclear as to create a significant exposure for interpretive disagreements. For example, we believe that the ANPRM criteria as written allows for the use of a very short term rate or a very long term rate, since either may reflect the rate at which pension benefits could be effectively settled at a current or future period, respectively. We encourage the CAS Board to adopt the industry recommendation of inserting two new sentences after the first sentence in CAS 412–40(b)(3)(ii) to read, "Acceptable interest rates selected by the contractor are those used for the PPA funding target, FASB 87 discount rate, long term bond rate, or another such reasonable measure. A contractor shall select and consistently follow a policy for the source of the interest rate used for the calculation of the minimum actuarial liability and minimum normal cost."

There was some concern expressed about the volatility between periods caused the use of current corporate bond rates. As commenter noted:

History shows that the FAS discount rate leads to volatile pension expense as the discount rate changes from one measurement date to the next. Exhibit A provides a monthly history of the Citigroup Pension Liability Index from January 31, 1985 through September 30, 2008. The Citigroup Pension Liability Index is a good proxy for the FAS discount rate. To illustrate how dramatically the index can change over a 12-month period, note that between May 31, 2002 and May 31, 2003, the Index dropped by 172 basis points. Using general actuarial rules of thumb, this drop would translate to a 22% increase in liability and a 41% increase in normal cost.

The interest assumption used for liabilities for determining minimum funding requirements under the PPA is based on high-quality corporate bonds, but PPA allows the plan sponsor the option to use a 24-month average of rates vs. a one month average.

Another commenter discussed the advantage of using an average bond rate, writing:

This result is not consistent with the fundamental desire to strive for predictability of cost in the government contracting arena. The impact that unforeseen changes in cost can have on fixed price contracts is obvious, but even unexpected cost increases on flexibly priced business can place a strain on government budgets. It is important to try to mitigate the potential pitfalls that might create inequitable financial results for either the government or the contractors.

The ANPRM maintains the concept of the actuarial accrued liability (AAL) that is calculated using an interest rate that represents the average long-term expected return on the pension trust fund. This reflects the CAS Board's view of pension funding as a long-term proposition. The ANPRM states that CAS 412 and 413 are concerned with long-term pension funding and minimizing volatility to enhance predictability. Since the new MAL is based on spot bond rates it will experience more volatility from year to year than the AAL. We believe that the addition of the MAL to the CAS calculations is an important change that is very much needed. However instead of measuring the MAL using spot bond rates each year, we feel very strongly that it is important to allow contractors to have an option to calculate the MAL using an expected long-term average bond rate. This would allow contractors to use an interest assumption that would not need to be changed each year, and would very significantly reduce the volatility of the MAL and greatly improve predictability of the pension cost. The MAL interest assumption would only need to be changed if it was determined that average future bond yields over a long-term horizon were expected to be materially different from the current MAL assumption. For example, if long-term bond rates were expected to fluctuate between 5.5% and 6.5% in the future, then a valid assumption for the expected average future rate might be 6.0%. So this concept would hold some similarities to the interest rate used for calculating the AAL. The main difference is that the AAL interest rate represents the average expected long-term future return on the investment portfolio, whereas the MAL interest rate would represent the average expected future long-term yield on high-quality corporate bonds. There should obviously be some correlation between the MAL interest rate and the AAL interest rate, so the two different rates should be determined on a consistent basis.

Several commenters suggested that the rule expressly permit use of a long-term rate to improve predictability & reduce volatility. The following is typical of this suggestion:

* * * However, because of the extreme volatility which could result from changes in market interest rates, [we] believes the CAS Board should explicitly take the position either in the standard or the preamble to the final publication, that contractors are permitted to calculate the minimum actuarial liability using a long-term expectation of high-quality bond yields, moving averages of reasonable durations beyond 24 months (a period described elsewhere in the proposed rule) or other techniques which enhance predictability.

Response: The ANPRM sets forth a conceptual description of the settlement rate which would include the corporate bond yield rate required by the PPA. Furthermore, the PPA permits several elections concerning the yield rate, *i.e.,* full or segmented yield curve, current or average yield curve, yield curve as of the valuation date or any of the 4 prior months. The Board agrees that a "safe harbor" should be included for clarity and to avoid disputes. The Board also believes that the election of the specific basis for the settlement interest rate is part of the contractor's cost accounting practice. Accordingly, the proposed rule at 9904.412–50(b)(7)(iv)(B) provides:

The contractor may elect to use the same rate or set of rates, for investment grade corporate bonds of similar duration to the pension benefits, as published or defined by the Government for ERISA purposes. The contractor's cost accounting practice includes any election to use a specific table or set of such rates and must be consistently followed.

The Board reaffirms its belief that the recognition of the more conservative assumptions required for plans whose funding ratio falls below a specific threshold, such as plans deemed "at risk" under the PPA, is inappropriate for the purposes of contract costing. The proposed rule requires that all other actuarial assumptions continue to be based on the contractor's long-term, best-estimate assumptions. (9904.412–50(b)(7)(iii)(B)) (Note that the DS–1, Part VII asks for the basis for selection of assumptions rather than the current numeric value.)

Topic F: Recognition of Minimum Actuarial Liability and Minimum Normal Cost.

Comments: One commenter was concerned with the added complexity

from introduction of the minimum actuarial liability and minimum normal cost into the development of the assignable pension cost as follows:

While the ability to have contractors determine their CAS assignable costs based on liabilities reflecting the yields on high-quality corporate bonds is a significant relief for the negative cash flow issue faced by government contractors, the process for introducing the MAL into the development of the CAS Assignable Costs will result in additional complexity in the calculations.

Several commenters were concerned that the assigned cost would occasionally be larger than necessary under the ANPRM. They believed that the assigned cost based on the adjusted liability would be excessive if the unadjusted assigned cost already exceeded the PPA minimum contribution. Some commenters recommended that the assigned pension cost be adjusted based upon a revised assigned pension cost only if the PPA minimum required contribution, without reduction for any credit balances, exceeds the assigned cost as measured on a long-term basis. As one commenter explained:

There can be situations where the CAS assignable cost developed without regard to the MAL would be larger than the PPA funding requirement. Regardless of this situation, under the ANPRM, if the MAL is higher than the regular AAL, the liabilities and normal costs will be adjusted to reflect the MAL and the MNC. This adjustment will result in even higher CAS assignable costs

This commenter suggested an alternative approach as follows:

Instead of applying minimums to the liabilities and normal costs used in the calculation of the CAS assignable cost, we present the following alternative (which we shall refer to as the "Minimum CAS Cost" alternative) for consideration and further study. We believe this alternative addresses the Board's goals of minimizing changes to CAS 412 and 413 and avoiding complexity as much as possible, while addressing the difference between CAS assignable costs and PPA minimum required contributions.

We believe this alternative will lead to less volatile CAS assignable costs compared to the ANPRM. In Attachment II, we compare results under this approach and under the ANPRM for a hypothetical sample. We recommend further study of this approach.

Under this alternative, the CAS assignable cost will be the greater of (a) and (b) below:

(a) The Regular CAS Cost, which is the CAS cost determined without regard to the CAS Harmonization Rule (*i.e.,* as determined under the current CAS 412 but with a 10-year amortization of gains/losses as proposed under the ANPRM),

(b) the Minimum CAS Cost which is equal to

(i) the Minimum Normal Cost; plus

(ii) a 10-year amortization of the unfunded MAL at transition; plus

(iii) a 10-year amortization of each year's increase or decrease in the unamortized unfunded MAL, where the unfunded MAL is equal to the difference between the Minimum Actuarial Liability and the CAS assets net of prepayment credits.

Thus, under this alternative, we impose a "minimum CAS cost" (*i.e.,* item b above) instead of minimum liabilities and normal costs. This will avoid the dramatic changes in CAS assignable costs that occur due to the switching between the regular AAL/NC and MAL/MNC.

Another commenter recommending this approach wrote:

As currently proposed, the MAL adjustment is only applied (or "triggered") when the MAL exceeds the AAL. When this occurs, the AAL is adjusted, as well as the NC. We recommend that in order to reduce cost volatility the Board consider a "cost based" trigger instead. The cost trigger would adjust for the difference between the MAL and AAL, and their associated normal costs, if: [the MAL less AAL amortized over 10 years] plus [the MNC less NC] exceeds $0.

The commenter also was concerned about the effect of inactive segments, writing:

One other issue exists with the proposed liability based MAL trigger. An inequity can result in the application of the requirements at the segment level, especially when a contractor has an inactive segment.

This commenter continues and compares the results of the method proposed in the ANPRM and a "cost based" trigger (identified as Plan 1 and Plan 2) and comments on the results as follows:

The liability trigger results in different costs for Plan 1 and Plan 2 while the cost trigger results in the same cost for both plans. Accordingly, a cost based trigger would treat contractors with and without inactive segments more equitably. In addition, a cost based trigger harmonizes with PPA better than a liability trigger since it is more likely to produce plan level CAS costs closer to PPA minimum contributions.

Regardless of whether a "trigger" approach is used, there was consensus that the comparison should be based on total liability for the period rather than separately testing the actuarial liability (also known as past service liability) and normal cost (incremental liability for the current period). These commenters suggested comparing the sum of the actuarial accrued liability plus the normal cost to the sum of the minimum actuarial liability and the minimum normal cost. One commenter illustrated the problem of comparing the liability and normal cost separately as follows:

The ANPRM proposes, at section 412–40(b)(3)(i), that the actuarial accrued liability (AAL) be adjusted when "the minimum actuarial liability exceeds the actuarial accrued liability." Consider the following example:

	Liability	Normal Cost	Total
AAL assumptions	$100	$10	$110
MAL assumptions	95	20	115

Based on the ANPRM, the MAL assumptions would not be used for this year because the MAL of $95 is less than the AAL of $100. However, because the $115 sum of the MAL and the minimum normal cost exceeds the corresponding amount of $110 on an AAL basis—which thus indicates that the appropriate end-of-year theoretical funding goal should be $115—the Board's intent would seem to be better implemented if the test at 412–40(b)(3)(i) was based upon the liabilities plus the normal costs for the year. This could be accomplished by modifying the relevant language to read: "* * * the minimum actuarial liability *(including minimum normal cost)* exceeds the actuarial accrued liability *(including normal cost).*"

On the other hand, one commenter noted that while a settlement liability is generally inappropriate as a basis for measuring the contract pension cost, such recognition of the settlement liability as a minimum liability is an important element of harmonization and provides better alignment for segment closing measurements.

While I am opposed to a fair value accounting as an accounting basis for the CAS, I also agree with the Board's proposal to subject the liability measurement to a settlement liability minimum.

I agree with this approach primarily because recognizing such a minimum liability measurement will not only achieve harmonization, but will better align the liability measured for period costing with the liability basis for segment closing adjustments and thereby increase predictability. * * *

Another public comment countered, arguing that the proposed ANPRM is based on a "hybrid approach," rather than a "going concern" approach and might not be appropriate given the Board's stated goals.

The proposed revisions to CAS 412 and 413 change the fundamental cost accounting

approach used to measure and assign pension cost. The current CAS 412 and 413 measure and assign pension cost using the "contractor's best estimates of anticipated experience under the plan, taking into account past experience and reasonable expectations of pension plan performance." The supplementary information in ANPR refers to the current rules as the "going concern approach."

The ANPR retains the "going concern approach" to measure the minimum amount of pension cost for a given accounting period. However, the ANPR requires an adjustment to the "going concern" amounts when either the cost of settling the pension obligation or the PPA minimum funding amount is higher than the "going concern" amount. The ANPR refers to cost of settling the pension obligation as the "settlement or liquidation approach."

The ANPR is therefore a hybrid of these two fundamentally different accounting approaches. As a result, we anticipate that applying the ANPR will both increase the complexity of the contractor's yearly actuarial calculation of pension cost and the amount of pension cost on Government contracts.

Finally, if the minimum actuarial liability is used as a minimum liability basis, two commenters felt that the rule should record changes in basis for the liability (AAL vs. MAL) between years as part of the gain or loss amortization base. Recommending that the change from actuarial accrued liability to the minimum actuarial liability basis and vice-versa as an actuarial loss or gain, respectively, one commenter wrote:

If the measurement basis is modified to reflect current bond rates, we suggest that the rules provide that any change in liability attributable to interest rates will be treated as a gain or loss for cost purposes.

This commenter also suggested that the Board consider adopting the PPA gain and loss approach that adjusts the new unamortized balance and keeps the amortization installment unchanged.

Prior to the PPA, it was standard practice to recalculate amortization payments if there was a change in the applicable interest rate. The PPA introduced a new methodology whereby the amortization amounts remain unchanged, and the difference in the present values is included in a new amortization base established as of the date of the change. For CAS purposes, this difference could be included in the gain and loss base. This method supports the objectives of the CASB because it is easier to apply and reduces the volatility associated with interest rate changes. We therefore recommend that the CAS adopt this approach or allow it as an option without the need for advance approval.

And finally, a commenter asked whether the gain and loss amortization charges reflect the MAL's current settlement interest rate or the long-term return on investment interest rate when the minimum liability applied.

If the MAL applies and the plan is setting up an amortization base for either a plan change or an assumption change, should the amortization base be set up reflecting liabilities on the same basis as the MAL or on the same basis as the regular AAL.

This commenter continued:

If the MAL applies, should amortization charges reflect the long-term interest rate or the MAL interest rate?

Response: The concept of the ANPRM was to recognize the contractor's potential obligation for payment of the settlement liability, which is the PPA funding target, as a minimum in the computation of the assigned cost. Many commenters to the SDP believed that adopting the PPA liability and normal cost would in and of itself provide sufficient harmonization. The amortization of the mandatory prepayment credits (discussed later) was added to the ANPRM to guarantee that the contractor would recover all of its required contributions within a reasonable time period.

As discussed in the ANPRM preamble, the Board continues to believe that contract cost accounting should continue to be based on the going concern basis. The Board also believes that recognition of the full valid liability for the pension plan must consider the risk associated with using the current settlement liability, especially during periods of unusually low corporate bond rates. Therefore, the NPRM retains the minimum actuarial liability as a "floor." The Board observes that during periods of low corporate bond rates the recognition of the minimum actuarial liability and minimum normal cost will harmonize the CAS with the measurement of the PPA minimum required contribution with only a slight lag in recognition due to differences in amortization periods (7 years vs. 10 years). In all other periods, the long-term going concern approach will ensure that annual funding towards the ultimate liability will continue to ensure that sufficient assets are accumulated to protect the participants' benefits.

The Board takes special notice of the comments recommending that the cost not be adjusted if the assigned cost equals or exceeds the PPA minimum required contribution—otherwise the CAS would impose a funding requirement above both the long-term assigned cost computation and ERISA minimum funding contribution. This NPRM proposes the use of a 3-step "trigger," as described under "Recognition of a "minimum actuarial liability" in the summary of the proposed rule. The 3-step trigger uses criteria for recognizing the minimum actuarial liability that is based on a comparison of the assigned pension cost measured on a long-term basis with the ERISA minimum required contribution measured on a settlement basis for a "non-at-risk" plan. If the minimum required contribution exceeds the cost measured by CAS for the period, the minimum liability and minimum normal cost adjustments will be determined, and the contract cost for the period will be re-determined based on the minimum actuarial liability and minimum normal cost. Finally, the pension cost for the period is measured as the greater of the total pension cost measured using the long-term liability and normal cost or the minimum actuarial liability and minimum normal cost.

The Board understands the appeal of recognizing additional contributions made as permitted by IRC Section 436 to improve the funding of a severely underfunded plan. However, the Board disagrees with the suggestion to recognize any additional contribution made to avoid the restrictions imposed by Section 436 of the IRC. The Board believes that recognition of such additional contributions is inappropriate for contract costing purposes because it would increase the volatility of costs between periods, reduce consistency between periods, and lessen comparability between contractors. Predictability would be diminished because the funding level can be affected by sudden changes in asset or liability values. Also, these additional contributions are permitted by the PPA, but are not required. Recognizing these contributions would subject contract costing to the financial management and employee relations decisions of contractors, which is distinctly different from proposing a rule that does not restrict a contractor's financial management decision-making. If the CAS would recognize such additional contributions, it might reduce the disincentive for funding the additional amount and eventually passing the unfunded liability on to the PBGC. However, it is not the purpose of the CAS to protect contractors from choices involving moral hazard.

The preamble to the ANPRM made it clear that the change from actuarial accrued liability to the minimum liability or vice-versa was proposed to be treated as an experience gain or loss, which would be amortized based on the long-term interest rate. For clarity the NPRM explicitly requires that any change in the unfunded actuarial liability due to the minimum actuarial liability be included as part of the actuarial gain or loss measured for the

period and amortized over 10-years based on the long-term interest assumption.

Frequent changes in the interest rates used for amortization purposes would introduce volatility and deviate from the Board objective of cost recognition on a long-term basis. Under the PPA, the gain or loss due to a change in interest rate is captured in the new amortization base and installment. The new installment is measured as the unfunded liability (shortfall) less the present value of the existing amortization installment based on the new interest rate. The rule proposed in this NPRM does not change the way in which amortization installments are measured. The long-term interest rate is used to measure amortization installments and unamortized balances. The Board would be interested in any analysis concerning the increase or reduction of volatility if amortization installment amounts are not changed once established and the effect of any interest rate change measured as an actuarial gain or loss.

Topic G: Computation of Minimum Required Amount.

Many commenters believed that the Minimum Required Amount should be measured without regard for any ERISA prefunding balances. Some commenters presented illustrations of how requiring a reduction to the minimum required amount for the prefunding balance would be inequitable to contractors who believe it is prudent to fund more than the bare minimum.

First, we understand that the intention of the ANPRM approach is to limit the pension costs recovered to the contractors' cash contributions to trusts that have been required to either fund a CAS pension liability or to fund a PPA minimum required contribution for ERISA. Thus, for Government contracting, the cash outlays the contractor has been required to make by PPA are recoverable, while those cash outlays made wholly at the discretion of the contractor are not recoverable until such time as they are no longer discretionary (*e.g.,* they are used to fund CAS pension cost or minimum funding requirements). We believe this approach to limit cost recovery is fair and equitable and support this concept. Fairness and equity might not prevail in some instances if discretionary amounts were immediately recoverable as contractor could influence from one accounting period to the next the amount of pension cost simply by its funding patterns. In addition, we believe this treatment intends to yield consistent cost recovery for contractors with the same funding requirements but different funding patterns over time. However, during our data modeling, we discovered that as currently written, the ANPRM can result in inequitable and inconsistent cost treatment for contractors with the same funding requirements but different funding patterns over time (refer to Illustration 1 in attachment). We believe this to be an unintended consequence that may be corrected with two revisions to the ANPRM.

One commenter believed that the definition proposed at 9904.412.30(a)(18) should include additional contributions for severely underfunded plans.

Additional contributions made to avoid benefit limitations should be treated as a minimum required contribution for purposes of computing mandatory prepayment credits. These contributions are not added to the prefunding balance and may not be used to meet minimum funding requirements for the current year or for any future period. However, they will serve to reduce the minimum required contribution determined for future periods and the mandatory prepayment credits potentially available. Under the proposed standard, special contributions to avoid benefit limitations in excess of the assignable costs will be treated as voluntary prepayments and this may significantly delay reimbursement of those costs. This rule may therefore discourage or penalize contractors with severely underfunded plans from making additional contributions to avoid benefit restrictions.

Response: The Board has reviewed the potential inequities that might arise if the minimum required amount is reduced for prefunding credits. The Board agrees with the commenters and believes that the appropriate comparison for determining when the assigned cost should be adjusted for a minimum liability should be based on comparison of the CAS assigned pension cost to the ERISA minimum required amount before any reduction for CAS prepayments or ERISA prefunding balances, including carry-over balances. This approach is consistent with the Board's desire to allow the contractor latitude in the financial management of its pension plan.

As discussed in the response to the previous topic, the Board believes that recognition of additional contributions made to avoid benefit restrictions are voluntary and could increase volatility. The NPRM does not include recognition of these contributions in the measurement of the minimum required amount.

Topic H: Special Accounting for Mandatory Prepayment Credits.

Comments: Two commenters believed that the special recognition of mandatory prepayment credits creates excess pension expense given other proposed rule harmonization features. One of the commenters believed that the rules relating to mandatory prepayment credits were overly complex and unnecessary.

We recommend that the CAS Board not adopt the proposed provision for annual amortizations of mandatory prepayment credits. We believe that the proposed mandatory prepayment credit provision, which is intended to provide an additional relief for a "negative cash flow" that the contractor may experience in early years, is superfluous and unnecessary, and is difficult to ensure compliance. In our opinion, harmonization of the CAS with the PPA has been achieved sufficiently in the ANPRM that recognizes the PPA liability, reduction in the amortization period for gains and losses, and increase in the assignable cost limitation.

As elaborated below, we believe that the accounting recordkeeping required for the proposed mandatory prepayment credits is unduly complex, burdensome, and unnecessary to achieving harmonization. Current CAS recognizes prepayment credits without distinguishing voluntary from mandatory prepayment credits. Moreover, the proposed creation of a mandatory prepayment account requires separate identification, accumulation, amortization, interest accrual, and other adjustment of mandatory prepayment credits for each year. This process will increase administrative costs, be prone to error, and be very difficult to validate the accuracy and compliance during audit. In our view, harmony with funding differences already exists in the current CAS provision for prepayment credits that will increase in value at the valuation rate of return for funding of future pension costs.

* * * * *

We fully agree with this comment that the ANPRM's recognition of the PPA liability, which is determined by using its required interest rate and mortality assumptions, will substantially close the differences between CAS and PPA cost determinations. All other differences would be minor. Accordingly, we believe that the ANPRM's recognition of the PPA liability alone would accomplish the Congressional mandate for the CAS Board to harmonize the CAS with the PPA. Since the interest rates of corporate bonds are typically less than long-term expected investment rates-of-return of a diversified, bond and equity portfolio as espoused by CAS, the "harmonized" minimum actuarial liability will generally be greater than the CAS-computed actuarial accrued liability. This larger liability will result in a larger unfunded actuarial liability which, in turn, will measure and assign greater pension cost allocable to Government contracts. Recognition of greater pension costs creates greater funding of the pension plan that will provide the funding level required for settling pension obligations under the plan.

Many other commenters advised the Board to revise provisions on amortization of mandatory prepayment credits to simplify the rule and to better coordinate rules for prefunding balances with the PPA. One of these commenters agreed that the proposed rule was too complex and suggested an approach to simplify the accounting for mandatory prepayments:

The proposed rule requires mandatory prepayment charges to be recalculated if the

balance is reduced by an amount in excess of the computed charge. We believe that this requirement is overly complex and prefer an approach that simply reduces the amortization period to reflect any excess payments. The PPA methodology for interest rate changes described in the preceding paragraph should also be permitted for amortization of mandatory prepayment balances. These changes will not only simplify the calculations but also improve the predictability of costs.

There were several comments concerning the interest rate used to update mandatory and voluntary prepayment credits. Most commenters believed that the mandatory and voluntary prepayment accounts should be updated using the same interest rate. They suggested that the rate should be the actual rate of return on assets used to update ERISA prefunding balances. One of the commenters stated:

The proposed CAS 412–50(a)(ii)(B) states that "the value of the voluntary prepayment account shall be adjusted for interest at the actual investment return rate * * *." To avoid possible conflicts, the regulations should more clearly describe how the "actual investment return rate" is to be determined and whether that rate should apply to contributions that generate voluntary prepayment credits during the plan year.

Another one of these commenters opined that the prepayments, once updated based on the actual rate of return, must be subtracted from the market value of assets before measuring the smoothed, actuarial value of the assets. The commenter believed this requirement should be included in the rule and explained:

The rationale for crediting an actual rate of return to prepayment balances is valid. However, if asset smoothing is used, prepayment balances must first be subtracted from plan assets in order to prevent unexpected results. The final standard should therefore specify that asset smoothing is to be applied to the assets after reduction for voluntary prepayment balances. This change in methodology should not require advance approval.

One commenter was particularly concerned with the interest rate used to update the mandatory and voluntary prepayment credits and wrote:

First, on item 2, "Mandatory Prepayment Credits," the actual net rate of return on investments should be used to adjust the value of and the accumulated value of mandatory prepayment credits. The ANPRM states, "Because neither the mandatory nor voluntary prepayment credits have been allocated to segments or cost objectives, these prepayments continue to be unallocated assets and will be excluded from the asset value used to measure the pension cost." Although prepayment credits are unallocated assets, the ANPRM language overlooks the fact that the current use of the long-term interest assumption rate to value prepayment credits has historically impacted the measurement of pension cost. Because the gains and losses attributable to prepayment credits do not accrue against the prepayment credits, they are credited or charged against the assets, thereby leveraging the impact of the gain or loss on the measurement of pension costs. Therefore, for prepayment credits to have no impact on the measurement of pension costs, they must be valued at the actual net rate of return on investments.

A commenter argued that government contractors for whom the percentage of their government contracting business is 90% or greater should be permitted to choose to claim reimbursement of the mandatory prepayment credit immediately when incurred.

We suggest, that for government contractors for whom the percentage of their government contracting business is 90% or greater, that they can choose to claim reimbursement of the mandatory prepayment credit immediately when incurred. Because they derive the vast majority of their income from government reimbursement, we believe that the delayed reimbursement of required cash contributions may create a difficult financing situation for these contractors.

Three commenters asked the Board to clarify that any mandatory prepayment charges are assigned to the period and allocated separately from and in addition to the assignable cost. Two of these commenters believed that the NRPM should not assign and allocate a mandatory prepayment charge in addition to the normally assigned pension cost, especially of the minimum liability concept was retained.

* * * In addition, when comparing the minimum required funding amount under ERISA with the CAS assignable cost for purposes of determining mandatory prepayment credits, it would be helpful to clarify that the CAS assignable cost does not include any mandatory prepayment charges assigned to the period.

Several commenters believed that the proposed record-keeping for mandatory prepayment credits is unduly complex and burdensome. There were many other comments expressing concerns or making detailed recommendations on how to improve or simplify proposed special accounting for mandatory prepayments. These recommendations included suggestions such as converting any voluntary prepayment credits used to fund the PPA minimum contribution to mandatory prepayment credits and establishing a level 5-year payment when the mandatory prepayment is created and maintaining that amount until the mandatory prepayment is fully adjusted.

The public comments also were concerned with the accounting for mandatory prepayment credits at the segment level. As one of these commenters suggested, the rules should be expanded to address how mandatory prepayment charges are apportioned among segments:

Special consideration is required when addressing the treatment of prepayment charges and credits in situations in which a plan maintains more than one segment. The proposed rules suggest that such apportionment is done in a manner similar to how the maximum deductible contribution is allocated. However, this approach does not work very well primarily because the maximum deductible contribution imposes a limit on the otherwise assignable cost, while the prepayment charges represent an addition to the otherwise assignable cost. Furthermore, while the maximum deductible contribution is primarily related to annual costs, the prepayment charges are generated through the underfunding of some segments. Accordingly, we believe that the apportionment of the prepayment charges is more appropriately related to funding levels. While such underfunding is often associated with higher annual costs, there is a much stronger relationship to funding levels.

However, before addressing this further, we think that the CAS Board needs to clarify that the voluntary and the mandatory prepayment accounts be maintained separately and not be apportioned to individual segments. This request is based on our understanding that the intention is for apportioning to occur when these accounts are allocated as part of the assignable cost. The remainder of our comments concerning the distribution of prepayment charges among segments is predicated on this understanding.

Response: The Board agrees with the commenters that the prepayment amortization rules proposed in the ANPRM are unduly complex and burdensome. The Board believes that imposing a settlement-based, minimum liability on the measurement of the pension cost for the period will provide sufficient harmonization with the PPA. The NPRM retains the current recognition of prepayment credits and does not distinguish between mandatory and voluntary prepayments.

The concept presented in the ANPRM was intended to apply the mandatory prepayments as quickly as possible to promote timely recovery of the minimum contributions and lessen the short term cash flow concerns of the contractor. Furthermore, the addition amortization of the mandatory prepayment credits would measure and assign pension cost in excess of that necessary to recognize the normal cost plus amortization of the unfunded actuarial liability.

Amortizing the mandatory prepayment credits essentially achieves a rolling average of the difference between the assigned cost and the contractor's cash contribution. In considering the possible approaches to

harmonization for the NPRM, the Board discussed the possibility of replacing the current cost accrual rules and the proposed recognition of the minimum actuarial liability with some mechanism to smooth the cash contributions over a 3 or 5-year period. However, such an approach would conflict with the Board's goal of basing pension costs on long-term accrual costs and thereby achieve better matching of costs with the activities of an ongoing concern.

This NPRM does not include any provisions to identify or account for mandatory prepayment credits. Nonetheless, the Board appreciates all the suggestions concerning improving the mandatory prepayment provisions.

Topic I: Assignable Cost Limitation (ACL) Requires Modification.

Comments: Most commenters were receptive to the proposal revising the assignable cost limitation and many submitted suggestions concerning clarification of the methodology for calculating the assignable cost limitation.

One commenter believed that the revision of the assignable cost limitation was important for improving predictability for forward pricing.

The impact of the ERISA full funding limitation, and more recently the CAS 412 Assignable Cost Limitation, has presented long-standing predictability problems for forward pricing. I am pleased the Board is addressing this problem, which has always been a predictability problem. This problem was first addressed in the Staff Discussion Paper (SDP) entitled "Fully Funded Pension Plans." 56 FR 41151, August 19, 1991. In that Paper, the staff wrote:

Government contract policymakers also have their own set of special needs, some involving the rhythms peculiar to the pricing of Government contracts, and others involving matters of public policy. It seems obvious, that in the pension area, aggregate pension costs included in prices must reasonably and accurately track accruals for pension costs on the books for Government contract costing purposes. In other words, booked pension costs need to be sufficiently predictable so that forward pricing rates for fixed price contracts are not based upon pension cost levels different from those ultimately accrued for the period of contract performance. That has not been happening in many instances when a fully funded status has been reached unexpectedly. Thus, in a number of instances, where estimated pension costs used for negotiating fixed price contracts include a significant element of pension cost, the subsequent achievement of full funding status served to eliminate pension costs altogether for the period of contract performance.

This commenter continued:

Based on the present ANPRM, the effect of predictability, or the lack thereof, on forward pricing remains a concern to the Board. In response to "#11 Assignable Cost Limitation," the Board explains:

The Board has reviewed the effect of the assignable cost limitation on cost assignment, especially the effect on predictability. Government agencies and contractors have both found that the abrupt and substantive change in pension cost as a plan goes above or below the current assignable cost limitation gives an unintended windfall to one party or another with respect to fixed price contracts. These abrupt and substantive changes also wreak havoc on program budgeting for flexibly-priced contracts. Currently, once assets equal or exceed the actuarial accrued liability and normal cost, the pension costs drop to zero and the Government's recovery of the surplus can be indefinitely delayed. When assets are lower than the liability and normal cost, the reverse occurs and the contract may never be able to recover substantial incurred pension costs that were never priced.

Conversely, another commenter expressed the belief that the 25% buffer was inappropriate and could allow excessive pension costs.

We do not think that the ACL should be raised to 125% of the AAL, plus the normal cost. * * * We are finding that the 125% threshold is unlikely to be reached, which may lead to excessive CAS expense. What happens is that there are no mechanics to wipe out the existing bases. On the other hand, under PPA, a plan is expected to be "fully funded" in 7 years. In reality, under most contractors' investment policy, it would be anticipated that there would be investment gains further reducing the PPA required funding in the long run, while CAS expense continues to grow under the ANPRM model.

Several commenters requested clarification concerning which components of the assignable cost limitation were to be increased by 25%. As one commenter expressed their concern:

Section 9904.412–30(a)(9) defines the Assignable Cost Limitation (ACL) to be "the excess, if any, of 125 percent of the actuarial accrued liability, without regard to the minimum actuarial liability, plus the current normal cost over the actuarial value of the assets of the pension plan."

It is unclear whether the 125 percent factor applies only to the AL, or to the Normal Cost and Actuarial Value of Asset as well. In other words, it would be helpful if clarification is provided regarding which of the following the ANPRM intends to be the ACL definition:

(a) 125% x AL, plus NC minus Assets

(b) 125% x (AL plus NC), minus Assets

(c) 125% x (AL plus NC minus Assets)

We believe (b) above is appropriate. The new ACL definition—which reflects the 125% factor—would allow for sufficient surplus assets that would make CAS assignable costs less volatile compared to the current definition.

Some commenters believe that the assignable cost limitation must also recognize the minimum actuarial liability and minimum normal cost to be consistent with computation of the pension cost. Furthermore, harmonization must reflect the settlement liability that is the funding goal of the PPA minimum required contribution.

It is our understanding that multiplying the AAL by 125% in determining the ACL is intended to add a cushion based on long-term funding. We also understand that multiplying the greater of the AAL and the MAL by 125% could, in some situations, result in a cushion that might be inappropriate from a policy perspective. At the same time, however, we feel that it would be inappropriate from a theoretical perspective for the ACL to limit costs in a manner that would preclude full funding on a settlement basis. Accordingly, we recommend that the ACL be calculated using liabilities/normal costs equal to the greater of (a) 125% of the AAL plus 100% of the normal cost and (b) 100% of the MAL plus 100% of the minimum normal cost.

Another commenter explained:

The second area with which we have a concern is the new assignable cost limit (ACL) calculation. While we appreciate the intent of the CAS Board to revise this calculation to reduce the frequency with which plans enter and exit full funding and impact pension costs significantly as a result, we do not believe the ANPRM achieves the desired result nor is aligned with the overarching purpose of this limitation. First, we understand the purpose of the ACL is to prevent an excessive buildup of CAS assets that have funded CAS pension cost. Since pension costs calculated under the ANPRM are based on the greater of the AAL or MAL, it follows that if the ACL is to prevent a buildup of assets that have funded pension costs, it too should consider both the AAL and the MAL. We recognize consideration of the MAL would allow for a higher level of assets, but we believe this is acceptable given that the ANPRM provides for a higher pension cost as well. If the ACL considers only the AAL, as the ANPRM is written, we do not believe that the calculation is aligned with its intended purpose.

We worked with [an actuarial firm] to support us in gathering contractor data estimates to develop a practical assessment of the materiality of the liabilities and normal costs anticipated to consider the effects on ACL results. A total of 13 contractors participated in this survey. Eleven of the survey participants are in the top 100 Department of Defense contractors for 2007. Of the top 100 contractors, many do not have defined benefit pension plans. Based on a data survey (refer to Illustration 3) and modeling by [the actuarial firm], it is the normal cost that will drive the pension cost going forward and accordingly should be more determinative in the ACL calculation to provide for the desired result of reducing the frequency of plans entering and exiting full funding. For these reasons, we recommend revising the calculation of the ACL to include the greater of 125% of the AAL or 100% of the MAL as measured at the end of the year when the respective normal costs would be part of each liability measure. We have provided recommended language for this

revision in the attachment in the section labeled CAS 412–30(a)(9).

Another commenter endorsed the 25% buffer but argued that the assignable cost limitation should not consider the minimum actuarial liability and minimum normal cost. As one commenter expressed their argument:

To limit the amount of the pension cost charged to Government contracts, the ANPRM provides a limitation to the amount of annual pension costs. The limit is "125 percent of the actuarial accrued liability, without regard to the minimum actuarial liability, plus the current normal cost over the actuarial value of the assets." We agree with this limitation because it affords some protection against the volatility caused by using the "settlement or liquidation approach."

In response to the ANPRM question as to whether amortization should continue unabated or be deemed fully amortized upon reaching or exceeding the assignable cost limitation, one commenter opined:

The supplementary information with the ANPRM also asked for comments on whether volatility might be better controlled if amortization bases always continue unabated even if the assets exceed the ACL limitation. We believe that allowing the amortization bases to continue unabated could introduce undesirable problems, for example where amortization bases are for negative amounts. We recommend that this concept of unabated bases not be pursued.

Response: The proposed rule does not change the basic definition of the assignable cost limitation and continues to limit the assignable cost to zero if assets exceed the actuarial accrued liability and normal cost. However, under this NPRM the actuarial accrued liability and normal cost shall be revalued as the minimum actuarial liability and minimum normal cost if the proposed criteria of 9904.412–50(b)(7) are met.

The Board shares the commenters' concerns regarding the volatility caused by the abrupt impact of the assignable cost limitation when assets equal or exceed the liability plus the normal cost. While predictability might be improved if pension costs continue to be measured and assigned as the funding level (assets compared to the liability plus normal cost) nears and then rises above and falls below 100%, the Board continues to have concerns with the accumulation of excess assets. Recognition of the minimum actuarial liability and minimum normal cost will decrease the circumstances when a contractor would face having to make a contribution to satisfy ERISA but not have an assignable pension cost for contract accounting purposes. If the assets exceed both the long-term liability and normal cost, and also the minimum actuarial liability and minimum normal cost, then there is no valid cost liability to be funded in the current period.

The Board believes the 10-year minimum amortization period for gains and losses and any liability increase due to the minimum actuarial liability provide sufficient smoothing of costs. Therefore, the NPRM does not include any assignable cost limitation buffer. Under the NPRM, once the revised assignable cost limitation is exceeded, the assigned pension cost continues to be limited to zero.

Topic J: Miscellaneous Topics.

(1) *Comment—Funding Hierarchy:* One commenter recommended that the contributions in excess of the minimum required contribution and voluntary prepayments be eliminated from the proposed "Funding Hierarchy". This commenter wrote:

ANPRM section 412–50(a)(4) contains the following hierarchy of pension funding:

1. Current contributions up to the minimum required funding amount;
2. Mandatory prepayment credits;
3. Voluntary prepayment credits; and
4. Current contributions in excess of the minimum required funding amount.

Although we have no particular concern with this hierarchical approach, and we understand the need for a hierarchy with regard to mandatory prepayment credits, we do have a concern with the required order of items 3. and 4. Specifically, given the lack of explanation in the ANPRM, and past experience at one Government agency, we are concerned that CASB may be attempting to eliminate—with no discussion—quarterly interest adjustments that have long been considered allowable costs on contracts with the DoD and other agencies.

* * * * *

To resolve this problem, we recommend that the funding hierarchy be limited to the first two elements listed above. Alternatively, we recommend that CAS 412 state explicitly that interest based on presumed funding in accordance with the schedule contained in the FAR shall be considered to be a component of pension cost. Under this scenario, however, we note that a number of changes to CAS 412/413 would be required that would be unrelated to harmonization.

Response: The application of current and prior contributions was an important component of the special treatment of mandatory prepayments credits. Since the NPRM does not provide for special treatment of mandatory prepayment credits, the previously proposed funding hierarchy is no longer necessary for the measurement, assignment, and allocation of pension costs. The Board notes that the allowability of pension costs and any associated interest is not addressed by the CAS. Issues of allowability fall within the purview of Part 31 of the Federal Acquisition Regulations (FAR).

(2) *Comment—Future Salary Increases:* One commenter urged the Board to continue recognition of future salary increases in order to promote full costing and to dampen volatility.

I applaud the Board for looking beyond mere coordination with the ERISA minimum required contribution and consideration of the effect of salary projections on the stability of costs across periods. Under #8b—Salary Projections" the Board states:

"The Board believes that the measurement of the actuarial accrued liability and normal cost should continue to permit recognition of expected future salary increases. Such recognition is consistent with a long-term, going concern basis for the liability measurement. Since the benefit increases attributable to the salary increases are part of the long-term cost of the pension plan, including a salary increase assumption helps to ensure that the assigned cost adequately funds the long-term liability. Anticipating future salary growth may also avoid sharp pension cost increases as the average age of the plan population increases with the march of the "baby-boomers" towards retirement."

Response: The Board has approached harmonization by ensuring that the liability used for contract costing purposes cannot be less than the liability mandated for measuring the minimum required amount. The NPRM does not add any new restrictions on the measurement of the going concern liability. While ERISA and GAAP have moved to settlement interest rates for computing the pension contribution or disclosed expense, both include recognition of established patterns of salary increases for purposes of determining the maximum tax-deductible contribution and the disclosed net periodic pension expense.

(3) *Comment—Cost Increase Due to Assumed Interest Rates:* One commenter expressed their belief that concerns about the increase in contract costs attributable to recognition of a settlement interest rate may be overstated. This commenter notes that the increase in benefits being paid as lump sum settlements has already lessened the difference between the going concern and the settlement liability. This commenter explains as follows:

We concede that market-based bond rates may result in increased costs, but the increases may be less than expected. For plans that pay lump sums based on current bond rates in accordance with § 417(e) of the Internal Revenue Code, the increased costs are probably already reflected to some degree. For plans that pay benefits not based on pay, and for many cash balance plans, costs will likely be determined under the minimum liability provisions of the proposed

rule and will therefore reflect the lower interest rates even if the standard measurement basis is not changed. Finally, we expect that many contractors will move to lower their projected long-term rates of return and will cite the current economic situation as justification for the change. These cost increases will be amortized over as little as 10 years under the proposed rules but can be phased-in more slowly under a transition rule if a change in the measurement basis is mandated.

Response: The Board believes that the current and proposed use of the long-term interest assumption, which is tied to the long-term expected return of the investment portfolio, is the most appropriate rate for contract costing that extends over multiple periods. A best estimate for the going concern approach includes reasonable assumptions regarding the payment of lump sums upon termination or retirement. However, as a matter of CAS harmonization, the use of a settlement rate basis for the limited purpose of determining the minimum actuarial liability and minimum normal cost is permitted and exempted from the general requirement that all assumptions be the contractor's "best estimate" of long-term expectations.

(4) *Comment—Interest Rate and Payment Amount to Amortize the Unfunded Actuarial Liability:* One commenter asked the Board to clarify the interest rate used to amortize the unfunded actuarial liabilities and submitted:

We believe the final rules need to clarify whether the long-term interest rate assumption is to be used to develop all amortization payments, regardless of whether the MAL is higher than the AAL.

Recommendation: We recommend the use of the long-term interest rate assumption in developing all amortization payments. This will simplify the calculations compared to an alternative that would reflect the long-term interest rate assumption in some situations and the MAL interest rate in other situations.

Another commenter was concerned with the re-computation of the amortization installment when interest rates are changed and recommended follows:

The proposed rule requires amortization payments to be based on the assumed long-term rate of return. If the liability measurement basis is changed to reflect current bond rates, the rules should clarify that amortization payments will be calculated based on the effective interest rate. Under ERISA/PPA, liabilities must be discounted using rates that vary by duration, but the plan's actuary is required to determine and disclose the single effective interest rate that will produce an equivalent liability. This rate should be materially consistent with the single discount rate used for FAS purposes. The CAS rule does not need to tie directly to ERISA or FAS, but if the language is properly drafted, it will allow the liabilities and interest rate to be obtained directly from either an ERISA report or a FAS report. Such a rule will also avoid confusion with the PPA rules that require amortization payments to be discounted using the yield curve or segment interest rates.

Response: The NPRM proposes to continue the current requirement to determine a level annual amount based on the prevailing long-term interest assumption and remaining amortization period. The Board notes that potential variances between asset values due to prepayments and asset valuation methods will often mean that the amortization bases and installments shown in a valuation report prepared for ERISA purposes will differ from amortization bases and installments shown in a valuation report prepared for CAS purposes.

(5) *Comment—Trust Expenses as a Component of Minimum Normal Cost:* One commenter requested that the rule specify that trust expenses are part of normal cost based on the amendments made to the PPA by the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA).

The Senate passed H.R. 7327, the Worker, Retiree, and Employer Recovery Act of 2008 on December 11, 2008. The bill was previously passed by the House. It now goes to the President where signature is expected. The Act contains provisions prescribing that pension asset trust expenses be included as part of ERISA target normal costs. These provisions were generically described as "technical corrections" to the Pension Protection Act (PPA). Accordingly we believe the change in treatment of trust expenses to be clearly within the PPA harmonization mandate to the CASB. The implications of this change would be significant for some contractors, exacerbating the negative cash flows that will be experienced by certain contractors.

[We believe] that PPA and CAS should be harmonized by revising the ANPRM to call out trust expenses as a component of CAS normal costs and to specify that reclassification of trust expenses as part of normal costs under both the actuarial accrued liability and minimum actuarial liability bases (versus a reduction to the expected long term interest rate) results in a required change in cost accounting practices whenever necessary to implement the harmonized CAS.

Response: The Board agrees that the minimum required amount should be computed in full accordance with the PPA and its amendments. The Board also believes it is not necessary to make such a specification concerning the long-term cost for CAS purposes. Currently the recognition of plan expenses under CAS is part of the contractor's actuarial assumptions and disclosed cost method. Expenses can be recognized as an increment of normal cost, either as an additional liability or as a decrement to the long-term interest assumption. Additionally, the NPRM specifies that the accumulated value of prepayment credits receives an allocation of administrative expenses in conformity with allocations to segments. The CAS is not in conflict with the PPA and there is no reason to change the current rule.

Administrative expenses can include the payment of investment and trustee fees associated with the investment and management of the assets, *i.e.,* asset-related expenses. Administrative expenses can come from the payment of the PBGC premium and distribution of benefit payments associated with the participants in the plan, *i.e.,* participant-related expenses. The Board is aware that the computation of the pension cost for segments will implicitly or explicitly recognize the estimated administrative expense for the period without distinction between asset investments and participant related expenses. When updating the market value of the assets, an allocation of asset-related expenses across all segments and the accumulated value of prepayment credits matches that expense with the causal/beneficial source of the expense. Allocation of participant-related expenses across all segments including the accumulated value of prepayment credits causes a mismatch of that portion of the expense with the causal/beneficial source of the expense. Conversely not allocating a portion of the asset-related expense to the accumulated value of prepayment credits causes a mismatch in the measurement of the period cost.

The Board believes that the complexity, expense and administrative burden associated with separate identification and allocation of asset-related expenses and participant-related expenses exceed any misallocations in measurement of the period costs, and/or in the allocation of expenses in the updating of asset values. The Board would be interested in any recommendations or analysis regarding the allocation of administrative expenses.

(6) *Comment—Require Use of Projected Unit Credit Actuarial Cost Method:* One commenter recommended that the CAS restrict the choice of actuarial cost method to the projected unit credit (PUC) cost method for the going concern basis of accounting.

The ANPRM notes that responses to the Staff Discussion Paper overwhelmingly support the adoption of a liability basis consistent with ERISA, as amended by the PPA. The Board narrowly interpreted the PPA liability as the amount computed for minimum funding purposes and rejected this

approach because it does not represent the liability for an ongoing plan. We advocate the use of the PUC method, which is required for financial reporting and also for determining the PPA maximum tax deductible limit. The PUC approach reflects projected liabilities (including estimated future salary increases) and is appropriate for an ongoing plan.

The PUC cost method is acceptable under the current and proposed CAS and many contractors are already using this method. Therefore, the discount rate is the only material change required to eliminate the conflict and ensure consistency between the CAS and other pension standards. * * *

Response: The NPRM permits the use of any immediate gain actuarial cost method, including the projected unit credit and therefore does not conflict with ERISA. The Board believes that the contractor should be permitted to use the actuarial cost method and assumptions that best suits its long term financial goals. The Board has not been presented with any risk to the Government or contractor that would demonstrate a need for such a restriction in choice of method.

(7) *Comment—Some Terminology is Inconsistent:* One commenter noted that the normal cost terminology was inconsistent in the ANPRM and advised the Board as follows:

We recommend that the rule define the terms "current normal cost" (used in CAS 412–30 but used in definition of Assignable Cost Limitation), "minimum normal costs" and "normal cost for period."

Response: The Board agrees. The NPRM includes proposed revisions that should ensure all terminology is used consistently throughout CAS 412 and 413.

The major structural difference of the NPRM has been to place most of the harmonization rule into one distinct paragraph at 9904.412–50(b)(7). In this way, the existing measurement, assignment and allocation language can stand unmodified, with some exceptions. If the criteria of 9904.412–50(b)(7) are met, then the user constructively substitutes the minimum actuarial liability value, through an adjustment computation, for the actuarial accrued liability, and the minimum normal cost for the normal cost, and then re-determines the computed, assigned, and allocated costs.

(8) *Comment—Illustrations are Complex:* One commenter opined that the illustrations are complex and suggested using a single reference table of actuarial information.

The illustrations are difficult to evaluate because of the complexity of the rule and the fact patterns of each illustration. We recommend that one reference table be used for the actuarial information covered under one or more illustrations.

Response: The Board agrees. The NPRM includes three examples of the proposed harmonization accounting in a new subsection 9904.412–60.1, Illustrations—CAS Harmonization Rule. The plan facts and actuarial methods and assumptions used for all three harmonization illustrations are described at 9904.412–60.1. These facts disclose that the contractor computes pension costs separately for one segment and on a composite basis for the remaining segments. A pension plan with all segments having an unfunded actuarial liability is the subject of 9904.412–60.1(b), (c) and (d), while a pension plan with one of the segments having an asset surplus is presented in 9904.412–60.1(e), (f) and (g). These two comprehensive examples illustrate the process of measuring, assigning and allocating pension costs for the period. The last illustration, 9904.412–60.1(h), shows how changes over three years between the long-term liability and the settlement liability bases are recognized as actuarial gains or losses.

(9) *Comment—Review the Board's Statement of Objectives, Principles and Concepts:* One commenter suggested that the Board should review and reaffirm its Statement of Objectives, Principles and Concepts.

In conclusion, I recommend that the CAS Board consider revisiting the Board's Statement of Objectives, Policies and Concepts. Part of any such review should include a reaffirmation of predictability as a specific goal or objective of CAS.

Response: The Board believes that while this may be a worthwhile endeavor, such a project would be time consuming and is beyond the scope and timetable for harmonization.

Topic K: Accounting at the Segment Level.

Comment: One commenter suggested that the Board explicitly state how the minimum actuarial liability calculation should be applied in segment accounting, writing:

The ANPRM is not clear regarding the comparison of the regular AAL and MAL under segment accounting: should the comparison be done at a plan level or for each segment individually?

This commenter then continued:

It would be helpful if the final rule is explicit regarding how the MAL should be applied in segment accounting. Otherwise, two contractors might apply the rules differently.

Response: Paragraphs 9904.413–50(c)(3) and (4) require the contractor to measure pension costs separately for a segment or segments whenever there is a difference in demographics, experience, or funding level. A contractor is also permitted to voluntarily compute pension costs on a segment basis. Currently a contractor is required to apply the criteria of 9904.412 to the determination of pension cost for each segment, or aggregation of segments, whenever costs are separately computed. Accordingly, if pension costs are computed at the segment level, under this proposed rule the minimum actuarial liability and minimum normal cost shall be computed at the segment level and the proposed provisions of 9904.412–50(b)(7) shall also be applied at the segment level. If pension costs are permitted to be measured on a composite basis and that is the contractor's established practice, then the minimum actuarial liability and minimum normal cost shall be measured for the plan taken as a whole.

Topic L: CAS 413–50(c)(12) Segment Closing Adjustments.

Comments: One commenter believes that the CAS 413–50(c)(12) segment closing adjustment should be based on the "going concern" liability unless there is an actual settlement. The commenter explained their position as follows:

The CAS 413–50(c)(12) adjusts pension costs when certain non-recurring events occur such as a curtailment of benefits or a segment closing. Though we agree with using the "settlement or liquidation approach" for the measurement of annual pension cost (because of the burden of the added funding requirements of PPA), we believe that the "going concern approach" is the superior method of cost accounting for pension costs and should be generally retained for purposes of computing the CAS 413–50(c)(12) adjustment. We believe that the "going concern approach" provides the best measure of the funds needed by the pension trust to pay pension benefits absent a settlement of the pension obligation. Our experience shows that defense contractors only very rarely settle pension obligations. Therefore, we recommend that the use of the "going concern approach" when a segment has (i) been sold or ownership has been otherwise transferred, (ii) discontinued operations, or (iii) discontinued doing or actively seeking Government business). We note that if the contractor settles the pension obligation due to a segment closing, the current CAS rule permits the use of the "settlement or liquidation approach." Also, we believe that using the "settlement or liquidation approach" for a curtailment of benefits is appropriate since the segment and Government contracts continue.

Three commenters believed that the Board should exempt segment closing adjustments from the five-year phase-in of the minimum liability. They believe that the segment closing adjustment, which is based on the current fair value of assets, should be subject to the current fair value liability for accrued benefits. It has been suggested in other

venues that the absence of such recognition has created a moral hazard wherein contractors purchase annuity contracts or pay lump sums to capture the current value of the liability and pass the increased cost to the Government. Comments included:

The transition rules at ANPRM section 413–64.1(c) provide that the MAL is to be phased-in over five years for segment closing purposes. Given that the premise of segment closing adjustments is that prior-period costs must be trued-up because there are no future periods in which to make adjustments, it does not make sense to us to have a phase-in rule where there is a final settlement. Because this phase-in does not apply to plan terminations, such a rule may encourage contractors to engage in more expensive terminations as a means of avoiding the phase-in. To correct this problem, we recommend that the phase-in be eliminated for segment closing calculations.

The proposed CAS 413–50(c)(12)(i) indicates that the liability used in the determination of a segment closing adjustment shall not be less than the minimum actuarial liability. In addition, the proposed CAS 413–64.1(c) indicates that the minimum actuarial liability is subject to a 5-year phase-in.

We recommend that a segment closing adjustment be determined without regard to the 5-year phase-in. Without this change, a segment closing adjustment can be significantly affected by the exact timing of the event. All other things being equal, other than the timing of the event (*i.e.,* within the 5-year phase-in period versus beyond this period), the ANPRM rules will result in different segment closing adjustments.

The transition rules were put in place to "allow time for agency budgets to manage the possible increase in contract costs and to mitigate the impact on existing non-CAS covered contracts." Since the segment closing adjustment represents a one-time event to "true up" CAS assets, it would be unreasonable to subject it to the transition rules and never "true up" the assets to the liability that would have been determined had the event occurred at a later date.

Response: The Board agrees that "the 'going concern approach' provides the best measure of the funds needed by the pension trust to pay pension benefits absent a settlement of the pension obligation." During periods leading up to the segment closing the proposed on-going contract accounting is intended to adequately fund the segment. The settlement liability will serve as a floor to the long-term "going concern" liability. Final accounting (*i.e.,* the true-up of assets and liabilities) when a segment is closed shall be based on the contractor's decision on how to maintain future funding of the segment, including the contractor's decision to accept risk of investment in stock equities or to incur the additional expense of transferring the liability. The segment closing provision continues to require that the actuarial accrued liability be based on "actuarial assumptions that are "consistent with the current and prior long term assumptions used in the measurement of pension costs." The assumptions used to measure the going concern liability may be influenced by modifications to the investment policy for the plan based on changed circumstances (Gould, Inc., ASBCA 46759, Sept. 19, 1997) or a persuasive experience study. This is the same position the Board held when CAS 413 was amended in 1995 when the Board stated in the preamble:

Consistent with the requirement that actuarial assumptions be individual best-estimates of future long-term economic and demographic trends, this final rule requires that the assumptions used to determine the actuarial liability be consistent with the assumptions that have been in use. This is consistent with the fact that the pension plan is continuing even though the segment has closed or the earning of future benefits has been curtailed. The Board does not intend this rule to prevent contractors from using assumptions that have been revised based on a persuasive actuarial experience study or a change in a plan's investment policy.

Because the segment closing adjustment shall continue to be determined based on the going concern approach, whether the benefit obligation is retained or settled, this NPRM has removed the 5-year phase-in requirement since the 9904.412–50(b)(7) "Harmonization Rule" does not apply to 9904.413–50(c)(12) segment closing adjustments.

Topic M: CAS 413–50(c)(12) Benefit Curtailment Adjustments.

Several commenters believed that the NPRM should eliminate voluntary benefit curtailments from the CAS 413–50(c)(12) required adjustment as long as the segment and contractual relationship continue, *i.e.,* let the curtailment be adjusted as an actuarial gain. These commenters noted that even if there is a complete benefit curtailment, there can be future pension costs due to experience losses. One commenter stated:

Since the CASB is addressing an issue related to plan curtailments, we submit the following suggestion: Revise the proposed rule to also exempt curtailments resulting from voluntary decisions to freeze benefit accruals (in circumstances where the segment is not closed and performance on Government contracts continues) from pension segment closing adjustment requirements. In these instances, gains and losses continue in the plan from demographics, measurement of liabilities and from performance of assets in the trust relative to expectations. Although there are no ongoing normal costs, in order to eliminate risk to both the Government and the contractor, (the contractor) believes these gains and losses should be measured and allocated to final cost objectives in cost accounting periods subsequent to the curtailment.

Another commenter was concerned that retaining the requirement to adjust for a voluntary benefit curtailment might create an incentive to settle the liability and potentially increase the government liability unnecessarily, as follows:

In a case where ERISA would require a cessation of benefit accruals for an "at risk" plan the ANPRM exempts that situation from the segment closing adjustment under CAS 413. We would suggest that CAS Board take this a step further and remove a curtailment of benefits as one of the triggers for a segment closing adjustment. This provision is unnecessary if the contractor is still conducting business with the government. The ongoing calculation of annual assignable cost could easily continue for a pension plan with frozen benefits. Implementing a segment closing adjustment would only provide incentive for the contractor to terminate the frozen plan and settle the pension obligations through annuity purchases and lump sum payments. That would only reduce the amount of any excess assets or increase the amount of any funding shortfall, which would then become an obligation of the government. It would seem to be advantageous to both the government and the contracting companies for the CAS Board to make this change.

One commenter believes that all benefit curtailments should be exempted from adjustment under 9904.413–50(c)(12) as follows:

Under current CAS 413, even if there are ongoing contracts an immediate segment closing adjustment occurs when a contractor freezes its pension plan voluntarily. We note that even when a plan is frozen, there are ongoing CAS costs. We also note that the current CAS 413 is silent as to whether or not ongoing CAS costs can be recognized. Because CAS 413 is silent, it is our understanding that in some situations, contractors are not allowed to further recognize the CAS costs, while there are other situations when such CAS costs are allowed. This results in inequity.

We believe that CAS 413 should be amended to explicitly allow ongoing CAS costs even after a contractor voluntarily freezes its pension plan, if there are ongoing contracts. We note that ongoing CAS costs are allowed under PPA-triggered plan freezes.

Another commenter echoed this request concerning post-curtailment accounting, and asked that if the requirement to make a CAS 413–50(c)(12) adjustment for voluntary benefit curtailments is retained, then the Board should address how to account for subsequent costs and events; *i.e.,* a benefit curtailment followed by a segment closing or plan termination.

The current and revised CAS rules require a CAS 413–50(c)(12) adjustment when

certain events occur such as a divestiture, curtailment of benefits, or pension plan termination. Over the history of a pension plan several events may occur, each requiring its own CAS 413–50(c)(12). Some of the events may impact the pension plan in total such as a curtailment of benefits and termination. To clarify the cost accounting rules, we recommend an illustration be added to show the accounting of a curtailment of benefits followed years later by a termination or when the contractor discontinues doing business with the Government.

Finally, one commenter asked that the Board consider whether the current government agency guidance on accounting for benefit curtailments, "Joint DCMA/DCAA Policy On Defined Benefit Plan Curtailments" dated August 2007, is consistent with the provisions of CAS 413.

Consistent with our earlier recommendation, the Board has provided that any temporary cessations of benefit accruals that may be required by PPA will not be deemed to be "curtailments" under CAS 413. Because curtailments must be revisited in any event to achieve harmonization, we encourage the CASB to abandon the curtailment concept in its entirety, given the ongoing nature of the contractual relationship between the parties. Alternatively, the CASB should consider whether or not current agency guidance, which requires contractors to compute ongoing pension costs under CAS 412/413 for periods following a curtailment, meets the requirements of CAS 413.

Response: The Board believes that the existing CAS 413 curtailment adjustment should be retained except for PPA mandated curtailments for underfunded plans. The 1995 amendments added a $0 floor to the assigned cost, a negative assigned cost would be measured based on the amortization credit for associated actuarial gains, but not assigned and adjusted. This raises a concern that recovery of the potentially large actuarial gain could be indefinitely deferred. This concern was remedied by the CAS 413–50(c)(12) adjustment which permits the Government to recover the surplus either immediately or, if the segment and plan continue, via an amortized contract cost adjustment external to the CAS assigned cost.

For a 9904.413–50(c)(12) adjustment for a benefit curtailment, the liability is adjusted to reflect the benefit curtailment, but the liability is not settled. In this case there is no justification for measuring the liability on a settlement basis. The Board realizes that ability to influence the amount of the benefit curtailment adjustment can provide an incentive for the contractor to consider settling the liability by payment of a lump sum or purchase of an annuity. The Board believes that the Cost Accounting Standards should not constrain the contractor's decisions concerning the financial management that it believes is most appropriate for the pension plan. The contract cost accounting must reflect the cost of the pension plan based on the actual financial management of the plan.

The Board agrees that after a benefit curtailment has occurred and been adjusted, there will continue to be actuarial gains and losses due to demographic and asset experience. To remove disputes concerning the accounting for pension costs and adjustments that are incurred after the benefit curtailment or other segment closing event, the provision proposed at 9904.413–50(c)(12)(ix) provides accounting guidance on the appropriate accounting for the adjustment charge or credit.

The Board does not comment on the administrative guidance issued by individual agencies. Such concerns about the CAS and its administration should be addressed to the Director of the Office of Federal Procurement Policy. The Board notes that agency guidance may have to be revised once this NPRM is issued as a Final Rule.

Topic N: CAS 412 Transition Rules Require Modification.

Comments: Some commenters expressed their concern that the transition rules were lengthy and complex.

As a general rule, we feel that the transition rules require additional thinking, and suggest that the Board carefully consider alternative transition approaches in the time leading up to the publication of a Notice of Proposed Rulemaking (NPRM). In particular, we are concerned that the transition rules are exceedingly complex. In our experience, this level of complexity will inevitably lead to increased disputes and the associated administrative costs. We understand that this is not an easy issue and would be willing to meet with the CASB or staff in an attempt to identify approaches that yield acceptable results to all parties.

One of these commenters remarked that the potential increase in pension costs argued for a longer smoothing period, but also noted that the contractors still had a concern with more immediate cost recovery.

We understand that the lengthy transition rules are intended to provide for smoothing of the substantial increases in pension costs likely to result from the final rules and the backlog of prepayment credits from funding PPA minimum requirements prior to the harmonization. Again, we worked with [an actuary] to gather contractor data estimates to develop a practical measure of the materiality of the increases anticipated to consider whether such an extended and complex transition seemed justified. The same 13 contractors participated in this data survey. The survey considered the effects of mandatory prepayments expected to be amortized under the transition rules and the effects on pension cost of using the higher of the AAL or MAL during the transition period. [The actuary] shared with us our combined data results * * * We believe that considering the data results in the context of the challenging financial conditions likely to affect Government contracting now and in the near future, the lengthy transition rules are generally appropriate. Though from a contractor's perspective more immediate cost recovery of cash outlays made as a result of PPA funding would be desirable, there clearly are other more significant competing considerations.

Gain and loss amortization: Two commenters recommended reducing the current 5-year transition period to 3 years, and two other commenters believed there should be no phase-in for the new 10-year gain/loss amortization rule. Regarding reducing the transition period, one commenter wrote:

[The commenter] believe that the rules providing for a five-year phase-in of certain harmonization provisions result in an undesirable and theoretically problematic shifting of costs from the years when the harmonized CAS 412 and 413 become effective to later years. This results in a bulge in costs in later years that will make programs unaffordable and contractors who continue to maintain defined benefit pension plans uncompetitive. This result is not theoretically sound and importantly has the effect of punishing contractors maintaining defined benefit pension plans, which is contrary to the intent of the PPA. Accordingly, [the commenter] recommends that the CASB shorten the current five-year transition period to three years.

Another commenter noted that given the recent market collapse, the elimination of the transition for gains and losses would result in a favorable impact to contract costing, and recommended:

* * * In particular, we do not see a need to phase-in the reduced amortization period for gains and losses. These costs (or credits) will not emerge until after the effective date of the revised standard. Unless the stock market recovers fairly quickly from its current lows, there may be significant market-related gains emerging during the transition period that could help to offset the increased costs anticipated under the revised rule. A phase-in of the 10-year amortization period will diminish the impact of these potential gains.

One commenter expressed their belief that the benefits of the gain and loss transition were not material, stating as follows:

We support the change from 15 years to 10 years in the amortization period for actuarial gains and losses. However, we do not agree with the 5-year transitional period that gradually reduces the amortization period. There is no advantage to the transitional

period as it only adds unnecessary complexity. If the Board believes that the current 15-year period delays recognition too far beyond the emergence of the gain or loss, and that 10 years is more appropriate, then there should simply be a change made from 15 years to 10 years. We don't believe that the impact on the cost would be material enough to justify adding a transition period for this change.

Legacy prepayments: Many commenters asked that the Board clarify how to make determination of mandatory vs. voluntary prepayment credits. These commenters noted that the legacy voluntary prepayment credits could be simply set equal to the ERISA credit balance. The following comment summarizes the basis for their request:

The proposed CAS 412–64.1(c)(2) indicates that any prepayment credit existing at the transition to the new rules will be deemed to be Voluntary Prepayment Credits (VPC), unless they can be identified as Mandatory Prepayment Credits (MPC).

It may be difficult for contractors to determine the split between the MPC and the VPC at transition, particularly if contributions were made many years ago. The burden will be greatest on contractors who have the longest contractual relationships with the Government. Also, contractors who have undergone merger and acquisition activity will deal with additional complexities. Without any provision specifying how the determination is to be made, how a contractor decides to develop the MPC at transition is potentially an area for dispute between the contractor and the Government.

Recommendation: We recommend a simplified method in determining the VPC and the MPC at transition. Under our proposed method, the VPC account at transition will be the ERISA Credit Balance. The MPC account at transition will be equal to the difference between the Prepayment Credit (as determined under the current CAS rules) and the ERISA Credit Balance (including both Carryover and Prefunding Balances as defined in PPA).

Note that the ERISA Credit Balance reflects the cumulative excess of discretionary contributions over ERISA minimum required contributions. This is akin to the ANPRM's intent of bucketing into the VPC account the contributions in excess of ERISA minimum required contributions, when the ERISA minimum required contributions exceed the CAS assignable costs.

Any remaining Prepayment Credit not categorized as Voluntary Prepayment Credit should thus be in the MPC account. If the Prepayment Credit at transition exceeds the Credit Balance, then that excess would be representative of the aggregate excess of ERISA minimum required contributions over CAS assignable costs, which this ANPRM intends to bucket into the MPC account.

Two commenters believed that the transition accounting for legacy, mandatory prepayment credits is untimely and overly complex and should be replaced with smoother 5-year amortization or a straight 7 to 10-year amortization. One commenter discussed the issue as follows:

We also do not believe that there should be a transitional provision for the amortization period that applies to mandatory prepayment credits. We don't understand the desire to establish a transitional period that roughly matches the typical contracting cycle. It would be more appropriate for the amortization period (as opposed to the transitional period) to roughly match the typical contracting cycle. This would more closely follow the themes of the FAR and CAS that prefer to match cost with the contracts under which that cost arose, and would also more closely follow the goal of harmonization with the PPA. So the amortization period for mandatory prepayment credits should simply be established at 5 years with no transition. If the government has a concern regarding the possible magnitude of legacy prepayment credits that have been created prior to the effective date of the harmonization rule then the government should try to collect some data regarding the amount of those legacy prepayment credits. If such data should demonstrate that the amortization amounts related to the legacy mandatory prepayment credits would impose a difficult financial burden on the government then perhaps a longer amortization period (longer than 5 years) should be established for the legacy mandatory prepayment credits.

Another commenter suggested the proposed tiered 12-year phase-in be maintained, but modified so all amortization ends in year 12, writing:

[The commenter] believes that the proposed transition rule for assigning existing mandatory prepayment credits to cost accounting periods is overly complex. The proposed transition rule divides existing mandatory prepayment credits into multiple increments which are then spread over varying periods of up to twelve years with a deferral of the commencement of the amortization of certain increments for up to four years. In addition to being overly complex and, unnecessarily protracted, the process described in the proposed rule results in an undesirable shifting of costs from earlier periods to the middle periods of the12-year range. This deferral will create an unaffordable burden on program budgets due to the theoretically problematic bulge in costs in the middle years of the proposed 12-year period. [The commenter] believes that the Board could remedy these issues by adopting a shorter overall amortization period of seven to ten years and through utilization of a simple straight line amortization technique.

In contrast, one commenter expressed its belief that transition accounting for legacy, mandatory prepayment credits prior to 2008 is unnecessary and that the special recognition should be limited to the period from 2008 when the PPA became effective until the harmonization rule is applicable.

Finally, the new PPA funding rules went into effect for plan years beginning after 2007 unless a Defense contractor qualifies for an exception pursuant to Section 106, which provides delayed implementation at the earlier of the effective date of the CAS Pension Harmonization Rule or January 1, 2011. Except for certain large Defense contractors that are permitted for delayed implementation, contractors are required to implement the PPA beginning in 2008. Their minimum required contributions under the PPA would likely exceed the CAS assigned cost resulting in "mandatory prepayment credits." To avoid any disparity and attain a fair playing field for all contractors, we recommend recognition of mandatory prepayment credits that are created as a direct result of the implementation of the PPA during the period between 2008 and the effective date of the CAS Harmonization Rule. The method for recognizing these "mandatory prepayment credits" under Government contracts is provided in the Phase-in provision of the ANPRM. We believe that recognition of mandatory prepayment credits as an additional component of assignable pension costs should be limited to these specific circumstances.

Response: In the ANPRM the Board explored several approaches for transition to the harmonization provisions. The Board agrees that the transition provisions of the ANPRM were too complex and that the transition period may have been too long. Many of the transition requirements proposed in the ANPRM have been eliminated from this NPRM. The NPRM only addresses the transition treatment of the change in unfunded liability due to recognition of the minimum actuarial liability.

One of the contracting community's major concerns even prior to the passage of the PPA was the large prepayment credits that had been accumulated because the CAS assigned cost had been less than the ERISA minimum required contribution, especially when the minimum was driven by the additional "deficit reduction contribution" based on the "current liability." The Board understands this concern. Several elements of the proposed harmonization rule will shorten the waiting period for using the prepayment because the allocable contract cost will approximate or exceed the PPA minimum required contribution. Some of these elements include the reduction of plan assets by prepayment credit when measuring the unfunded actuarial liability for CAS purposes, and continuing to base the CAS pension cost on the long-term liability and normal cost in periods when the minimum actuarial liability does not impose a floor liability.

The Board believes that the proposed 10-year amortization of actuarial gains and losses provides adequate smoothing of costs and avoids the build-up of amortization installments. Accordingly,

the NPRM includes no proposal to phase-in the 10-year amortization period which eliminates complexity.

As previously addressed, this NPRM does not provide special recognition of "mandatory prepayment credits" as defined in the ANPRM. As part of the analysis of the proposed provisions of the ANPRM and the public comments, the Board reviewed the requirements of Section 106 of the PPA. Section 106 only addresses harmonization of CAS 412 and 413 with the minimum funding requirement of the PPA. The Board believes that any special recognition of "legacy" mandatory prepayments is beyond the scope of this case.

The Board is concerned with the variance between the required minimum contribution and the allocable cost during the delay of CAS harmonization since PPA became effective in 2008. Assuming that CAS harmonization had been in effect in 2008, the main drivers behind this variance for a pension plan with no CAS prepayment credits and no ERISA prefunding or carry-over balances are (1) the difference in amortization periods for experience gains and losses, and (2) the actuarial loss attributable to using the minimum actuarial liability. The Board did consider providing a remedy for these variances during the delay period. However, the recent extraordinary large asset losses have so magnified the difference between the assigned pension cost and the ERISA minimum contribution that the cost increase for any special recognition is prohibitive and would skew the true cost for the period. Once the initial effects of the market downturn and the initial contribution increase attributable to the PPA have been recognized, the proposed harmonization should bring CAS and ERISA into better alignment while reducing the risk of any unnecessary budget shortfalls for the government contracting agencies.

To manage possible increases in contract costs, the revised draft proposed rule retains a transitional 5-year phase-in, approximating the typical contracting cycle, for any liability adjustment. As proposed, any adjustment to the actuarial accrued liability and normal cost, based on recognition of the minimum actuarial liability and minimum normal cost, will be phased-in over a 5-year period at 20% per year, *i.e.,* 20% of the difference will be recognized the first year, 40% the next year, then 60%, 80%, and finally 100% beginning in the fifth year. Importantly, the proposed transition phase-in should provide at least partial harmonization relief for contractors with contracts that are exempt from CAS–Coverage. At the same time, the proposed phase-in provisions are intended to make the possible cost increases due to harmonization more manageable for the procuring agencies.

Topic O: Consideration for Effect of Significant Declines in Asset Values Given Extreme Adverse Economic Conditions.

Comment: One commenter was concerned that the amount of prepayments will grow at the assumed long-term rate of interest while the market value of assets declined 30%. This would allow the contractor to unfairly, but unintentionally, gain an out of pocket windfall by permitting an artificially larger prepayment balance to "fund" the pension cost. The commenter noted:

> We agree with the proposed change to use the actual net rate of return on investments to adjust the value of and the accumulated value of voluntary prepayment credits. However, we are concerned with the implementation of the proposed change. Many Government contractor pension plans have been around for a long time and have accumulated large surpluses. We have seen an influx of significant prepayment credits by Government contractors in recent years. The current historic adjustment in the stock market is an extraordinary event. Implementation of the new rule could create a situation where huge market adjustments attributable to the prepayment credits will be leveraged against the Government share of contractor pension assets while the prepayment credits are left, not only untouched, but increased by the long-term interest assumption rate. After implementation of the proposed change, the prepayment credits will then share in future market rebounds. Therefore, consideration should be given to the impact of the asset loss from this extraordinary event in the implementation of the proposed ruling. Additionally, special recognition of extraordinary events should be included in the basic rule for annual costing and segment closings.

Response: The Board appreciates this concern with the potential windfall because the prepayment credits are adjusted with a positive interest rate while the actual assets have declined precipitously. The Board notes that during periods over the last few decades that pension funds have earned returns in excess of the long-term assumption. The net under or over-statement of the accumulated value of prepayments due to the difference in assumed and actual rate of returns over time is difficult to assess. For this reason, and because the Board may only promulgate rules that are prospectively applied, this NPRM does not provide for any special adjustment of the accumulated value of prepayment credits prior to the applicability date of the proposed rule.

Once harmonization becomes applicable, the proposed rule will update the accumulated value of prepayment credits based on an allocable portion of the actual rate of return. This will eliminate the commenter's specific concern once harmonization is in effect.

The exceptional events in the market since late 2008 raise the question as to whether there should be special provisions for the gains and losses attributable to such circumstances. The Board is interested in any comments concerning whether the gain or loss from exceptional events should be amortized over a longer period, *i.e.,* retain the 15-year amortization for such gains and losses. The Board would also appreciate comments on how an exceptional event might be defined or identified.

Topic P: Effective Date and Applicability Date.

Comments: Many commenters asked the Board to revise the effective date of the final rule so as to delay PPA funding requirements until 1/1/2011 for "eligible government contractors" who report on a calendar year basis. The contractors were also concerned that if the harmonization rule was published close to the end of one calendar year they could become subject to it on the first day of the following calendar year without sufficient time to revise their internal cost accounting systems or pricing models. A commenter stated:

> Having a delayed effective date would be a reasonable way of dealing with this problem. Another approach would be to allow contractors to currently update forward pricing even though the final changes to the CAS have not yet been determined. It is unlikely that the Department of Defense would support that approach. Therefore we feel that the CAS Board should clarify that the effective date would not be until 2011.

Several other commenters asked the Board to clarify the effective date of the rule change for existing and new CAS covered contracts. As one of these commenters explained:

> We agree with the ANPRM that the rule should be effective immediately, so that contractors can begin incorporating the effects of the new rule into pricing. We understand that the rule will then become applicable for a contractor in the year following receipt of a new contract or subcontract covered by CAS. We believe the CAS Board intends for the final rule to be applicable to all CAS covered contracts of the contractor after the applicability date not just new contracts, so contractors will be calculating pension costs under only the new CAS rules. However, this is unclear in the ANPRM.

Another commenter asked that the Board consider permitting early

adoption of the new rules subject to Contracting Officer approval, especially if the contractor only had a very limited number of CAS-covered contracts which would not be re-awarded for a delayed period.

The ANPRM states that the new rule will apply to the first cost-accounting period commencing after the later of (i) the date the final rule is published in the **Federal Register**, or (ii) the receipt of a contract or subcontract covered by the CAS. This rule may therefore have a delayed effective date for many CMS contractors who operate under 5-year contracts. Since the new rule is intended to resolve conflicts between the CAS and the PPA, we believe there should be a provision to allow a contractor to adopt early compliance, subject to the approval of the Contracting Officer.

Response: As proposed there are three key dates involved when this rule is published:

1. Date published in the **Federal Register**;

2. Effective Date—Date when contractors must first comply with the new or revised Standard when pricing new contracts or negotiating cost ceilings for new contracts that will be performed after the applicability date; and

3. Applicability Date—Date when the new or revised CAS must be followed by the contractor's cost accounting system for the accumulating, reporting and final settlement of direct costs and indirect rates. This is the first cost accounting period following the receipt of a contract subject to CAS 412 and 413 either through CAS-Coverage or Part 31 of the FAR.

The Board is making every effort to complete this case as quickly as possible. The Board cannot control the publication date for the **Federal Register**, and the Final Rule might be published in 2010. The NPRM proposes to make this rule "effective" as of the date published in the **Federal Register** as a Final Rule.

Once the Final Rule is effective and a contractor accepts the award of a new contract subject to CAS 412 and 413, that contract and any subsequent contracts will be subject to the CAS Harmonization Rule beginning with the next accounting period.

CAS-covered contracts awarded and priced prior to the effective date, that priced or budgeted costs based on the existing CAS, may be eligible for an equitable adjustment in accordance with FAR 52.230–2. This includes contracts awarded on or after the publication date but before the effective date.

To minimize the period between the publication and effective dates, the Board will be closely monitoring the date the Final Rule will be approved and the expected publication date.

The Board believes that the proposed coverage at 9904.412–63.1 and 9904.413–63.1 is consistent with the Board's authorizing statue and past practice. The Board believes that basing the effective and applicability date provisions on any event other than the award of a new contract subject to the provisions of CAS 412 and 413 can cause uncertainty and increase disputes. Therefore, the NPRM does not propose any mechanism for early adoption of the proposed rule. Once the CAS Harmonization Rule is published as a Final Rule, contractors that may not receive a new contract subject to CAS 412 and 413 for several years may request a voluntary change in accounting method and request that the contracting officer consider the change as a desirable change. The contracting officer's decision would be considered under the normal administrative procedure for such requests and would be based on facts and circumstances.

Topic Q: Change in Accounting Practice and Equitable Adjustments.

Comments: One commenter requested clarification that changes to conform to the CAS Harmonization Rule are "Mandatory" Changes that are eligible for Equitable Adjustments.

The response to item 19 in the background and summary of the ANPRM indicates that new rules would be mandatory changes. However, this is not specified in the proposed rules themselves. Recognizing the significant impact of the changes being introduced, we would suggest to ensure that the portions of the new rules, which should be treated as required changes be clearly identified. Accordingly, we ask the CAS Board to consider adding additional language * * * to 9904.412–63(d) and 9904.413–63(d) such as the following suggestion:

All changes to a contractor's cost accounting practices required to comply with the revisions to the Standards in 9904.412 as published [Date published in the Federal Register] shall be treated as required changes in practice as defined under 9903.201–6(a) to be applied to both existing and new contracts.

Two commenters asked that changes to better align their actuarial cost method (cost accounting practice) with the PPA be deemed "desirable" changes, or possibly "mandatory" changes. Changes in actuarial valuation of assets and treatment of expenses as a component of normal cost were given as examples. They are hopeful that all such mandatory and desirable changes could be combined for purposes of measuring the cost impact and negotiating an equitable adjustment.

In our view, there would be significant advantages to both contractors and the Government if contractors were permitted to harmonize their CAS asset smoothing methodology to match their PPA method without that change being deemed a voluntary change in cost accounting practice. This approach would reduce administrative costs by contractors, would simplify future audits and would be consistent with the PPA requirement to harmonize CAS 412/413 with the PPA minimum required contribution. In addition, this would simplify contract and administration with respect to contractors that are considering announcing soon that they intend to modify their asset smoothing formula, effective January 1, 2011, to be the same as their PPA method.

The ANPRM implies that any change in actuarial asset method would be considered as a voluntary change in cost accounting practice, even if a contractor wanted to adopt the same actuarial asset value that is used for calculating ERISA costs under the provisions of the PPA. We feel that such a change should not be considered as a voluntary change in cost accounting practice. The introduction of the MAL will better align the CAS accrued liability with the ERISA liability. If a contractor determines that aligning the actuarial asset value with the ERISA asset value would enhance the objective of achieving harmonization then that specific change should explicitly be allowed.

One commenter asked the Board to clarify that a contractor will continue to have an ability to choose measurement bases and accounting methods, writing as follows:

To minimize disputes, it will be helpful if the rules make clear that in the areas where the contractor has options in how certain items are determined (*e.g.,* MAL interest assumption, actual return on assets, etc.), those items would be considered part of the contractor's CAS accounting policy. Any meaningful changes would be subject to the rules on changes in accounting policy. Because every contractor has their own methodologies and specific issues, general rules that become part of the CAS accounting policy would be preferential to any proscriptive rules. If proscriptive rules were used, contractors would have more certainty around how a particular item should be determined, but odd results could arise depending on the contractor's particular situation.

One commenter asked that plan consolidations made in response to the PPA be treated as a "desirable" change of cost accounting practice.

Because of the increased funding requirements PPA imposes and the sweeping nature of changes to CAS 412 and 413 contemplated by the ANPRM, Northrop Grumman believes the CASB should consider adopting a provision addressing consolidation of plans with disparate practices by expressly providing for desirable change treatment for the impact of consequential changes in cost accounting practices. Such a provision could reasonably provide for tests to ensure the government's interests were not harmed by materially

adverse reallocation of existing trust assets or pension liabilities. We believe this would result in lower administrative expense over time and should in certain circumstances partially mitigate contractors' cash flow issues. Suggested additional language might read as follows:

"Cost accounting practice changes required to implement pension plan realignments and plan consolidations are deemed to be desirable changes if the resulting combination does not materially reduce the government's participation in pension plan assets net of pension plan liabilities."

Another commenter asked if the pension harmonization rule would require a single or multiple equitable adjustments.

The Transition Method at 9904.412.64.1 provides that the adjustment of the actuarial accrued liability, mandatory prepayment credit, and normal cost are phased-in over a 5-year period. This adjustment will require an equitable adjustment when the standard becomes effective. While the equitable adjustment may be measured in year one, the actual adjustment would need to be made in each of the first five years (2011 through 2016). Some may argue that the contracting officer may be required to enter into a series of equitable adjustments for each change to the amortization period. This approach is overly burdensome to the contracting officers and may cause contract disputes. As a result, we recommend that the ANPR add language to clarify this important point, or remove these phase-in rules.

Response: While the NPRM includes changes to or introduction of new elements regarding the measurement, assignment and allocation of pension costs, the proposed amendment of CAS 412 and 413 causes a single change in cost accounting practice. The change is from the existing CAS 412 and 413 bases to the amended CAS 412 and 413 bases. Implementation of the changes and any equitable adjustments that might be required by this single mandatory change are CAS administration processes and are beyond the Board's authority.

Changes not required to be made to conform to the proposed amendments are voluntary changes. The determination of whether such voluntary changes may or may not constitute a desirable change is also a CAS administration matter and dependent upon the facts and circumstances unique to each request.

Some contractors may have changed their asset valuation, recognition of expenses, or other method in response to the PPA prior to the publication of this proposed rule. The Board believes it would be unfair for contractors to be afforded different treatments based on when the change was made. As discussed elsewhere, the Board has only proposed changes necessary to harmonize CAS with the PPA and has avoided limiting or restricting the contractor's ability to adopt cost methods that it believes are most appropriate for the pension plan.

The Board believes that changes in plan design, plan mergers and other such changes are not contract cost accounting changes required by the harmonization rule. Furthermore, some contractors may have made many of these plan design and consolidation changes prior to the harmonization rule's effective date. As with the desirable changes discussed above, it would be unfair to provide different treatment based on when changes on made.

Topic R: Opportunity for Additional Comments.

Comments: Several commenters asked the Board to consider (i) extending the ANPRM comment period, (ii) publishing a second ANPRM for additional public comment or (iii) publish a second NPRM if significant changes are made from ANPRM. One of these commenters acknowledged the short timeframe available to the Board.

Response: The Board published a notice on November 26, 2008 (73 FR 72086) extending the comment deadline to December 3, 2008. Two supplemental comments and one new comment were received. While this NPRM has changed, replaced or eliminated many of the proposed revisions from the ANPRM, these changes are based on comments and recommendation from the public. The NPRM does not introduce any significant new concepts and the Board decided to publish the proposed changes as a proposed rule. The Board has decided to publish the proposed revisions as a NPRM and permit a 60-day comment period for this NPRM. The Board does not anticipate permitting an extension of time to comment upon the NPRM.

Surveys and Modeling Data. The Board continues to be very interested in obtaining the results of any studies or surveys that examine the pension cost determined in accordance with the CAS and the PPA minimum required contribution and maximum tax-deductible contribution.

D. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this proposed rule because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.* The records required by this proposed rule are those normally maintained by contractors who claim reimbursement of pension costs under Government contracts.

E. Executive Order 12866 and the Regulatory Flexibility Act

Because most contractors must measure and report their pension liabilities and expenses in order to comply with the requirements of FAS 87 for financial accounting purposes, the economic impact of this proposed rule on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this proposed rule will not result in the promulgation of an "economically significant rule" under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this proposed rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this proposed rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

F. Public Comments to Notice of Proposed Rulemaking

Interested persons are invited to participate by providing input with respect to this proposed rule for harmonization of CAS 412 and 413 with the PPA. All comments must be in writing, and submitted either electronically via the Federal eRulemaking Portal, e-mail, or facsimile, or via mail as instructed in the **ADDRESSES** section.

As with the ANPRM the Board reminds the public that this case must be limited to pension harmonization issues. As always, the public is invited to submit comments on other issues regarding contract cost accounting for pension costs that respondents believe the Board should consider. However, comments unrelated to pension harmonization will be separately considered by the Board in determining whether to open a separate case on pension costs in the future. The staff continues to be especially appreciative of comments and suggestions that attempt to consider the concerns of all parties to the contracting process.

List of Subjects in 48 CFR 9904

Government procurement, Cost Accounting Standards.

Daniel I. Gordon,

Chair, Cost Accounting Standards Board.

For the reasons set forth in this preamble, Chapter 99 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 9904—COST ACCOUNTING STANDARDS

1. The authority citation for Part 9904 continues to read as follows:

Authority: Pub. L. 100–679, 102 Stat 4056, 41 U.S.C. 422.

2. Section 9904.412–30 is amended by revising paragraphs (a)(1), (9) and (23) to read as follows:

9904.412–30 Definitions.

(a) * * *

(1) *Accrued benefit cost method* means an actuarial cost method under which units of benefits are assigned to each cost accounting period and are valued as they accrue; that is, based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial accrued liability at a plan's measurement date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the Unit Credit cost method without salary projection.)

* * * * *

(9) *Assignable cost limitation* means the excess, if any, of the actuarial accrued liability plus the normal cost for the current period over the actuarial value of the assets of the pension plan.

* * * * *

(23) *Prepayment credit* means the amount funded in excess of the pension cost assigned to a cost accounting period that is carried forward for future recognition. The Accumulated Value of Prepayment Credits means the value, as of the measurement date, of the prepayment credits adjusted for investment returns and administrative expenses and decreased for amounts used to fund pension costs or liabilities, whether assignable or not.

* * * * *

3. Section 9904.412–40 is amended by adding paragraph (b)(3) to read as follows:

9904.412–40 Fundamental requirement.

* * * * *

(b) * * *

(3) For qualified defined benefit pension plans, the measurement of pension costs shall recognize the requirements of 9904.412–50(b)(7) for periods beginning with the "Applicability Date of the Harmonization Rule."

* * * * *

4. In 9904.412–50, paragraphs (a)(1)(v), (2), (4), (b)(5) and (c)(1), (2) and (5) are revised, and paragraph (b)(7) is added to read as follows:

9904.412–50 Techniques for application.

(a) * * *

(1) * * *

(v) Actuarial gains and losses shall be identified separately from unfunded actuarial liabilities that are being amortized pursuant to the provisions of this Standard. The accounting treatment to be afforded to such gains and losses shall be in accordance with Cost Accounting Standard 9904.413. The change in the unfunded actuarial liability attributable to the liability adjustment amount computed in accordance with 9904.412–50(b)(7)(i)(A), including a liability adjustment amount of zero if the provisions of 9904.412–50(b)(7) do not apply for the period, shall be identified and included in the actuarial gain or loss established in accordance with 9904.412–50(a)(1)(v) and 9904.413–50(a)(1) and (2) and amortized accordingly.

* * * * *

(2)(i) Except as provided in 9904.412–50(d)(2), any portion of unfunded actuarial liability attributable to either pension costs applicable to prior years that were specifically unallowable in accordance with the then existing Government contractual provisions, or pension costs assigned to a cost accounting period that were not funded in that period, shall be separately identified and eliminated from any unfunded actuarial liability being amortized pursuant to paragraph (a)(1) of this section.

(ii) Such portions of unfunded actuarial liability shall be adjusted for interest at the assumed rate of interest in accordance with 9904.412–50(b)(4) without regard to 9904.412–50(b)(7). The contractor may elect to fund, and thereby reduce, such portions of unfunded actuarial liability and future interest adjustments thereon. Such funding shall not be recognized for purposes of 9904.412–50(d).

* * * * *

(4) Any amount funded in excess of the pension cost assigned to a cost accounting period shall be accounted for as a prepayment credit. The accumulated value of such prepayment credits shall be adjusted for investment returns and administrative expenses in accordance with 9904.413–50(c)(7) until applied towards pension cost in a future accounting period. The accumulated value of prepayment credits shall be reduced for portions of the accumulated value of prepayment credits used to fund pension costs or to fund portions of unfunded actuarial liability separately identified and maintained in accordance with 9904.412–50(a)(2). The accumulated value of any prepayment credits shall be excluded from the actuarial value of the assets used to compute pension costs for purposes of this Standard and Cost Accounting Standard 9904.413.

* * * * *

(b) * * *

(5) Pension cost shall be based on provisions of existing pension plans. This shall not preclude contractors from making salary projections for plans whose benefits are based on salaries and wages, or from considering improved benefits for plans which provide that such improved benefits must be made. For qualified defined benefit plans that ERISA permits recognition of historical patterns of benefit improvements under a plan covered by a collectively bargained agreement, the contractor may recognize the same benefit improvements.

* * * * *

(7) "*CAS 412 Harmonization Rule*": For qualified defined benefit pension plans, in any period that the minimum required amount, measured for the plan as a whole, exceeds the pension cost, measured for the plan as a whole and limited in accordance with 9904.412–50(c)(2)(i), then the actuarial accrued liability and normal cost are subject to adjustment in accordance with the provisions of paragraph (b)(7)(i) of this section, and the measured cost shall be adjusted if the criteria of paragraph (b)(7)(ii) of this section are met.

(i) Actuarial accrued liability and normal cost adjustment: In any period that the sum of the minimum actuarial liability plus the minimum normal cost exceeds the sum of the unadjusted actuarial accrued liability plus the unadjusted normal cost, the contractor shall adjust the actuarial accrued liability and normal cost as follows:

(A) The actuarial accrued liability and normal cost determined without regard to this paragraph are the unadjusted actuarial accrued liability and normal cost, respectively:

(B) The liability adjustment amount shall be equal to the minimum actuarial liability, as defined by paragraph (b)(7)(iii)(A) of this section, minus the unadjusted actuarial accrued liability. The liability adjustment amount shall be added to the unadjusted actuarial accrued liability to determine the adjusted actuarial accrued liability. If the liability adjustment amount is a negative amount, that amount shall be subtracted from unadjusted actuarial

accrued liability to determine the adjusted actuarial accrued liability:

(C) The normal cost adjustment amount shall be equal to the minimum normal cost, as defined by paragraph (b)(7)(iii)(B) of this section, minus the unadjusted normal cost. The normal cost adjustment amount shall be added to the unadjusted normal cost to determine the adjusted normal cost. If the normal cost adjustment amount is a negative amount, that amount shall be subtracted from unadjusted normal cost to determine the adjusted normal cost; and

(D) The contractor shall measure and assign the pension cost for the period in accordance with 9904.412 and 9904.413 by using the values of the adjusted actuarial accrued liability and adjusted normal cost as the values of the actuarial accrued liability and normal cost.

(ii) The pension cost for the period shall be the greater of either the pension cost, measured for the period in accordance with paragraph (b)(7)(i) of this section, or the pension cost measured without regard to this paragraph. For purposes of this paragraph (b)(7)(ii), the pension costs measured for the period shall be compared before limiting the cost in accordance with 9904.412–50(c)(2)(ii) and (iii).

(iii) Special definitions to be used for this paragraph:

(A) The *minimum actuarial liability* shall be the actuarial accrued liability measured under the accrued benefit cost method and using an interest rate assumption as described in 9904.412–50(b)(7)(iv).

(B) The *minimum normal cost* shall be measured as the normal cost measured under the accrued benefit cost method and using an interest rate assumption as described in 9904.412–50(b)(7)(iv).

(C) *Minimum required amount* means the contribution required to satisfy the minimum funding requirements of ERISA. For purposes of this paragraph, the minimum required contribution shall not include any additional contribution requirements or elections based upon the plan's ratio of actuarial or market value of assets to the actuarial accrued liabilities measured for ERISA purposes. The minimum required amount shall be measured without regard to any prepayment credits that have been accumulated for ERISA purposes (*i.e.,* prefunding balances).

(iv) Actuarial Assumptions: The actuarial assumptions used to measure the minimum actuarial liability and minimum normal cost shall meet the following criteria:

(A) The interest assumption used to measure the pension cost for the current period shall reflect the contractor's best estimate of rates at which the pension benefits could effectively be settled based on the current period rates of return on investment grade fixed-income investments of similar duration to the pension benefits:

(B) The contractor may elect to use the same rate or set of rates, for investment grade corporate bonds of similar duration to the pension benefits, as published or defined by the Government for ERISA purposes. The contractor's cost accounting practice includes any election to use a specific table or set of such rates and must be consistently followed:

(C) For purposes of this paragraph, use of the current period rates of return on investment grade corporate bonds of similar duration to the pension benefits shall not violate the provisions of 9904.412–40(b)(2) and 9904.412–50(b)(4) regarding the interest rate used to measure the minimum actuarial liability and minimum normal cost: and

(D) All other actuarial assumptions used to measure the minimum actuarial liability and minimum normal cost shall be the same as the assumptions used elsewhere in this Standard.

* * * * *

(c) * * *

(1) Amounts funded in excess of the pension cost assigned to a cost accounting period pursuant to the provisions of this Standard shall be accounted for as a prepayment credit and carried forward to future accounting periods.

(2) For qualified defined-benefit pension plans, the pension cost measured for a cost accounting period is assigned to that period subject to the following adjustments, in order of application:

(i) Any amount of pension cost measured for the period that is less than zero shall be assigned to future accounting periods as an assignable cost credit. The amount of pension cost assigned to the period shall be zero.

(ii) When the pension cost equals or exceeds the assignable cost limitation:

(A) The amount of pension cost, adjusted pursuant to paragraph (c)(2)(i) of this subsection, shall not exceed the assignable cost limitation,

(B) All amounts described in 9904.412–50(a)(1) and 9904.413–50(a), which are required to be amortized, shall be considered fully amortized, and

(C) Except for portions of unfunded actuarial liability separately identified and maintained in accordance with 9904.412–50(a)(2), any portion of unfunded actuarial liability, which occurs in the first cost accounting period after the pension cost has been limited by the assignable cost limitation, shall be considered an actuarial gain or loss for purposes of this Standard. Such actuarial gain or loss shall exclude any increase or decrease in unfunded actuarial liability resulting from a plan amendment, change in actuarial assumptions, or change in actuarial cost method effected after the pension cost has been limited by the assignable cost limitation.

(iii) Any amount of pension cost of a qualified pension plan, adjusted pursuant to paragraphs (c)(2)(i) and (ii) of this section that exceeds the sum of the maximum tax-deductible amount, determined in accordance with ERISA, and the accumulated value of prepayment credits shall be assigned to future accounting periods as an assignable cost deficit. The amount of pension cost assigned to the current period shall not exceed the sum of the maximum tax-deductible amount plus the accumulated value of prepayment credits.

* * * * *

(5) Any portion of pension cost measured for a cost accounting period and adjusted in accordance with 9904.412–50(c)(2)that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of ERISA shall not be assigned to the current period. Rather, such excess shall be treated as an assignable cost deficit, except that it shall be assigned to future cost accounting periods using the same amortization period as used for ERISA purposes.

* * * * *

5. Section 9904.412–60 is amended by revising paragraphs (b)(2) and (3), (c)(1) through (5), (c)(13), and (d)(4) to read as follows:

9904.412–60 Illustrations.

* * * * *

(b) * * *

(2) For several years Contractor H has had an unfunded nonqualified pension plan which provides for payments of $200 a month to employees after retirement. The contractor is currently making such payments to several retired employees and recognizes those payments as its pension cost. The contractor paid monthly annuity benefits totaling $24,000 during the current year. During the prior year, Contractor H made lump sum payments to irrevocably settle the benefit liability of several participants with small benefits. The annual installment to amortize these lump sum payments over

fifteen years at the long-term interest rate assumption is $5,000. Since the plan does not meet the criteria set forth in 9904.412–50(c)(3)(ii), pension cost must be accounted for using the pay-as-you-go cost method. Pursuant to 9904.412–50(b)(3), the amount of assignable cost allocable to cost objectives of that period is $29,000, which is the sum of the amount of benefits actually paid in that period ($24,000) plus the second annual installment to amortize the prior year's lump sum settlements ($5,000).

(3) Contractor I has two qualified defined-benefit pension plans that provide for fixed dollar payments to hourly employees. Under the first plan, the contractor's actuary believes that the contractor will be required to increase the level of benefits by specified percentages over the next several years based on an established pattern of benefit improvements. In calculating pension costs, the contractor may not assume future benefits greater than that currently required by the plan. However, if ERISA permits the recognition of the established pattern of benefit improvements, 9904.412–50(b)(5) permits the contractor to include the same recognition of expected benefit improvements in computing the pension cost for contract costing purposes. With regard to the second plan, a collective bargaining agreement negotiated with the employees' labor union provides that pension benefits will increase by specified percentages over the next several years. Because the improved benefits are required to be made, the contractor can consider such increased benefits in computing pension costs for the current cost accounting period in accordance with 9904.412–50(b)(5).

* * * * *

(c) * * *

(1) Contractor J maintains a qualified defined-benefit pension plan. The actuarial accrued liability for the plan is $20 million and has been adjusted based on the minimum actuarial liability required by 9904.412–50(b)(7). The actuarial value of the assets of $18 million is subtracted from the actuarial accrued liability of $20 million to determine the total unfunded actuarial liability of $2 million. Pursuant to 9904.412–50(a)(1), Contractor J has identified and is amortizing twelve separate portions of unfunded actuarial liabilities. The sum of the unamortized balances for the twelve separately maintained portions of unfunded actuarial liability equals $1.8 million. In accordance with 9904.412–50(a)(2), the contractor has separately identified, and eliminated from the computation of pension cost, $200,000 attributable to a pension cost assigned to a prior period that was not funded. The sum of the twelve amortization bases maintained pursuant to 9904.412–50(a)(1) and the amount separately identified under 9904.412–50(a)(2) equals $2 million ($1,800,000 + 200,000). Because the sum of all identified portions of unfunded actuarial liability equals the total unfunded actuarial liability, the plan is in actuarial balance and Contractor J can assign pension cost to the current cost accounting period in accordance with 9904.412–40(c).

(2) Contractor K's pension cost computed for 2016, the current year, is $1.5 million. This computed cost is based on the components of pension cost described in 9904.412–40(a) and 9904.412–50(a) and is measured in accordance with 9904.412–40(b) and 9904.412–50(b). The pension cost measured for the total plan exceeds the minimum contribution amount for the period, and therefore the actuarial accrued liability and normal cost were not required to be adjusted in accordance with 9904.412–50(b)(7). The assignable cost limitation, which is defined at 9904.412–30(a)(9), is $1.3 million. In accordance with the provisions of 9904.412–50(c)(2)(ii)(A), Contractor K's assignable pension cost for 2016 is limited to $1.3 million. In addition, all amounts that were previously being amortized pursuant to 9904.412–50(a)(1) and 9904.413–50(a) are considered fully amortized in accordance with 9904.412–50(c)(2)(ii)(B). The following year, 2017, Contractor K computes an unfunded actuarial liability of $4 million. Contractor K has not changed his actuarial assumptions nor amended the provisions of his pension plan. Contractor K has not had any pension costs disallowed or unfunded in prior periods. Contractor K must treat the entire $4 million of unfunded actuarial liability as an actuarial loss to be amortized over ten years beginning in 2017 in accordance with 9904.412–50(c)(2)(ii)(C) and 9904.413–50(a)(2).

(3) Assume the same facts shown in illustration 9904.412–60(c)(2), except that in 2015, the prior year, Contractor K's assignable pension cost was $800,000, but Contractor K only funded and allocated $600,000. Pursuant to 9904.412–50(a)(2), the $200,000 of unfunded assignable pension cost was separately identified and eliminated from other portions of unfunded actuarial liability. This portion of unfunded actuarial liability was adjusted for 8% interest, which is the interest assumption for 2015 and 2016, and was brought forward to 2016 in accordance with 9904.412–50(a)(2). Therefore, $216,000 ($200,000 × 1.08) is excluded from the amount considered fully amortized in 2016. The next year, 2017, Contractor K must eliminate $233,280 ($216,000 × 1.08) from the $4 million so that only $3,766,720 is treated as an actuarial loss in accordance with 9904.412–50(c)(2)(ii)(C).

(4) Assume, as in 9904.412–60(c)(2), the 2016 pension cost computed for Contractor K's qualified defined-benefit pension plan is $1.5 million and the assignable cost limitation is $1.7 million. The accumulated value of prepayment credits is $0. However, because of the ERISA limitation on tax-deductible contributions, Contractor K cannot fund more than $1 million without incurring an excise tax, which 9904.412–50(a)(5) does not permit to be a component of pension cost. In accordance with the provisions of 9904.412–50(c)(2)(iii), Contractor K's assignable pension cost for the period is limited to $1 million. The $500,000 ($1.5 million − $1 million) of pension cost not funded is reassigned to the next ten cost accounting periods beginning in 2017 as an assignable cost deficit in accordance with 9904.412–50(a)(1)(vi).

(5) Assume the same facts for Contractor K in 9904.412–60(c)(4), except that the accumulated value of prepayment credits equals $700,000. Therefore, in addition to the $1 million tax-deductible contribution, Contractor K can also apply the $700,000 accumulated value of prepayment credits, which is available for funding as of the first day of the plan year, towards the pension cost computed for the period. In accordance with the provisions of 9904.412–50(c)(2)(iii), Contractor K's assignable pension cost for the period is the full $1.5 million computed for the period. A new prepayment credit of $200,000 is created by the excess funding after applying the full $700,000 accumulated value of prepayment credits, plus $800,000 of the $1 million tax deductible contribution, towards the assigned cost of $1.5 million creating a new prepayment credit ($700,000 + $1 million − $1.5 million). The remaining $200,000 prepayment credit is adjusted for $14,460 of investment returns allocated in accordance with 9904.412–50(c)(1) and 9904.413–50(c)(7) and the sum of $214,460 is carried forward until needed in future accounting periods in accordance with 9904.412–50(a)(4).

* * * * *

(13) The assignable pension cost for Contractor O's qualified defined-benefit

plan is $600,000. For the same period, Contractor O contributes $700,000 which is the minimum funding requirement under ERISA. In addition, there exists $75,000 of unfunded actuarial liability that has been separately identified pursuant to 9904.412–50(a)(2). Contractor O may use $75,000 of the contribution in excess of the assignable pension cost to fund this separately identified unfunded actuarial liability, if he so chooses. The effect of the funding is to eliminate the unassignable $75,000 portion of unfunded actuarial liability that had been separately identified and thereby eliminated from the computation of pension costs. Contractor O shall then account for the remaining $25,000 ([$700,000 − $600,000] − $75,000) of excess contribution as a prepayment credit in accordance with 9904.412–50(a)(4).

* * * * *

(d) * * *

(4) Again, assume the set of facts in 9904.412–60(d)(2) except that, Contractor P's contribution to the Trust is $105,000 based on a long-term assumed interest assumption of 8%. Under the provisions of 9904.412–50(d)(2) the entire $100,000 is allocable to cost objectives of the period. In accordance with the provisions of 9904.412–50(c)(1) Contractor P has funded $5,000 ($105,000 − $100,000) in excess of the assigned pension cost for the period. The $5,000 shall be accounted for as a prepayment credit. Pursuant to 9904.412–50(a)(4), the $5,000 shall be adjusted for an allocated portion of the total investment earnings and expenses in accordance with 9904.412–50(a)(4) and 9904.413–50(c)(7). The prepayment credit plus allocated earnings and expenses shall be excluded from the actuarial value of assets used to compute the next year's pension cost. The accumulated value of prepayment credits of $5,400 (5,000 × 1.08) may be used to fund the next year's assigned pension cost, if needed.

* * * * *

6. Section 9904.412–60.1 is added to read as follows:

9904.412–60.1 Illustrations—CAS Harmonization Rule.

The following illustrations address the measurement, assignment and allocation of pension cost on or after the Applicability Date of the Harmonization Rule. The first series of illustrations present the measurement, assignment and allocation of pension cost for a contractor with an under-funded segment, followed by another series of illustrations which present the measurement, assignment and allocation of pension cost for a contractor with an over-funded segment. The actuarial gain and loss recognition of changes between the long-term liability and the settlement liability bases are illustrated in 9904.412–60.1(h). The structural format for 9904.412–60.1 differs from the format for 9904.412–60.

(a) *Description of the pension plan, actuarial assumptions and actuarial methods used for 9904.412–60.1 Illustrations.* (1) *Introduction:* Harmony Corporation has a defined-benefit pension plan covering employees at seven segments, all of which have some contracts subject to this Standard and 9904.413. The demographic experience for employees of the Segment 1 is materially different from that of the other six segments so that pursuant to 9904.413–50(c)(2)(iii) the contractor must separately compute the pension cost for Segment 1. Because the factors comprising pension cost for Segments 2 through 7 are relatively equal, the contractor computes pension cost for these six segments on a composite basis. The contractor does not separately account for pension costs related to its inactive employees. The contractor has received its annual actuarial valuation for its qualified defined benefit pension plan, which bases the pension benefit on the employee's final average salary. The plan's Enrolled Actuary has provided the following disclosure concerning the methods (Table 1) and assumptions (Table 2) used to perform the valuation. The Contractor has accepted and adopted these methods and assumptions as its cost accounting practice for this pension plan.

TABLE 1—ACTUARIAL METHODS FOR CAS 412 AND 413 COMPUTATIONS

Valuation date	January 1, 2016
Actuarial Cost Methods:	
CAS 412 & 413 and Tax Deductibility	Projected Unit Credit Cost Method.
Minimum Required Amount	Unit Credit Cost Method without Salary Projection.
Asset Valuation Methods (Actuarial Value of Assets):	
CAS 412 and 413	5–Year delayed recognition of realized and unrealized gains and losses; but within 80% to 120% of Market Value of Assets.
ERISA	24–Month Average Value of Assets but within 90% to 110% of Market Value.

TABLE 2—ACTUARIAL ASSUMPTIONS FOR CAS 412 AND 413 COMPUTATIONS

Long-term expected interest rate:	
Basis	Based on expected long-term return on investment for each class of investment and on the investment mix and policy.
Long-term best-estimate	7.50%
Corporate Bond "Settlement" Rate:	
Basis	24–Month Average 3–Segment Yield Curve as of preceding November 1.
Current Value (Effective Rate)	6.20%
Future Salary Increases	3.00%
Mortality	RP2000 Generational Tables as published by the Secretary of Treasury.
Expense Load on Liability or Normal Cost:	
Long-term liability & Normal Cost	Included as decrement to long-term interest assumption.
Minimum liability & Normal Cost	0.5% of market value of assets added to minimum normal cost.
All other assumptions:	Based on the long-term best estimate of future events. Same set of assumptions is used for ERISA without regard to "At Risk" status.
Change in assumptions since last year:	None.

(2) *Actuarial Methods and Assumptions:* (i) Salary Projections: As permitted by 9904.412–50(b)(5), the contractor includes a projection of future salary increases and uses the projected unit credit cost method, which is an immediate gain actuarial cost method that satisfies the requirements of 9904.412–40(b)(1) for measuring the actuarial accrued liability and normal cost. The unit credit cost method (also known as the accrued benefit cost method) measures the liability for benefits earned prior to and during the current plan year and is also an immediate gain cost method that satisfies 9904.412–40(b)(1) and 50(b)(1).

(ii) Interest Rate:

(A) Long-Term Interest Rate: The contractor's basis for establishing the long-term interest rate assumption satisfies the criteria of 9904.412–40(b)(2) and 9904.412–50(b)(4).

(B) "Settlement" Rate: For purposes of measuring the minimum actuarial liability and minimum normal cost the contractor has elected to use a set of investment grade corporate bond yield rates published by the Secretary of the Treasury. The basis and set of corporate bond rates meet the requirements of 9904.412–50(b)(7)(iv)(A), (B) and (C).

(iii) Mortality: Mortality is based on a table of generational mortality rates published by the Secretary of the Treasury and reflects recent mortality improvements. This table satisfies 9904.412–40(b)(4) which requires assumptions to "represent the contractor's best estimates of anticipated experience under the plan, taking into account past experience and reasonable expectations." Alternatively, use of the annually updated and published static mortality table would also satisfy this requirement, but in that case the contractor should disclose the source and annual nature of the mortality rate rather than the specific table. The specific table used for each valuation shall be identified.

(iv) Actuarial Value of Assets:

(A) The valuation of the actuarial value of assets used for CAS 412 and 413 is based on a recognized smoothing technique that "provides equivalent recognition of appreciation and depreciation of the market value of the assets of the pension plan." The disclosed method also constrains the asset value to a corridor bounded by 80% to 120% of the market value of assets. This method for measuring the actuarial value of assets satisfies the provisions of 9904.413–50(b)(2).

(B) The Actuarial value of assets used for ERISA purposes limits the expected interest to a specific corporate bond rate regardless of the investment mix and actual expectations. This method fails the criteria of 9904.413–50(b)(2) by not allowing for recognition of potential appreciation. The actuarial value of assets derived under this method cannot be used for CAS 412 and 413 purposes. This actuarial value of assets may be used to determine the minimum required amount since that amount is measured in accordance with ERISA rather than CAS 412 and 413.

(v) An actuarial cost method, as defined at 9904.412–30(a)(4), recognizes current and future administrative expenses. For contract costing purposes, administrative expenses are implicitly recognized as a decrement to the assumed interest rate. Since the published sets of corporate bond rates are not decremented for expenses, the expected expense is explicitly added to the minimum normal cost.

(b) *Underfunded Segment—Measurement of Pension Costs.* Based on the pension plan, actuarial methods and actuarial assumptions described in 9904.412–60.1(a), the Harmony Corporation determines that Segment 1 and Segments 2–7 each have an unfunded actuarial liability and measures its pension cost for plan year 2016 as follows:

(1) *Asset Values:* (i) Market Values of Assets: The contractor adjusts the prior period's market value of assets in accordance with 9904.413–50(c)(7). The accumulated value of prepayment credits are separately identified from the assets allocated to segments and are adjusted in accordance with 9904.412–50(a)(4) and 9904.413–50(c)(7). The adjustment of the market value of assets, including the accumulated value of prepayment credits is summarized in Table 3.

TABLE 3—JANUARY 1, 2016 MARKET VALUE OF ASSETS

	Total plan	Segment 1	Segments 2–7	Accumulated prepayments	Note
Market Value at January 1, 2015	$13,190,000	$1,503,000	$10,633,000	$1,054,000	1
Prepayment Credit Applied		49,000	390,700	(439,700)	1
Contribution	940,080	104,400	835,680		1
Benefit Payments	(864,800)	(80,600)	(784,200)	n/a	1
Investment Earnings	1,068,600	126,341	892,633	49,626	2
Administrative Expenses	(76,000)	(8,986)	(63,485)	(3,529)	3
Market Value at January 1, 2016	14,257,880	1,693,155	11,904,328	660,397	.....
Weighted Average Asset Values	13,227,640	1,563,900	11,049,440	614,300	4

Note 1: Information taken directly from the actuarial valuation report prepared for CAS 412 and 413 purposes and supporting documentation.

Note 2: The investment earnings are allocated among segments and the accumulated value of prepayment credits based on average weighted asset values in accordance with 9904.413–50(c)(7) and 9904.412–50(a)(4).

Note 3: The administrative expenses are allocated among segments and the accumulated value of prepayment credits based on average weighted asset values in accordance with 9904.413–50(c)(7) and 9904.412–50(a)(4).

Note 4: The prepayment credits were transferred and applied on the first day of the plan year. The contribution deposit and benefit payments occurred on July 1, 2015. The weighted average asset value for each segment and the accumulated value of prepayment credits was computed by giving 100% weight to the prepayment credit transfer amounts and 50% weighting to the contribution and benefit payments.

(ii) Actuarial Value of Assets: Based on the contractor's disclosed asset valuation method, recognition of the realized and unrealized appreciation and depreciation from the current and four prior periods is delayed and amortized over a 5-year period. The portion of the appreciation and depreciation that is deferred until future periods is subtracted from the market value of assets to determine the actuarial value of assets for CAS 412 and 413 purposes. Table 4 summarizes the determination of the actuarial value of assets by segment as of January 1, 2016.

TABLE 4—JANUARY 1, 2016 ACTUARIAL VALUE OF ASSETS

	Total plan	Segment 1	Segments 2–7	Notes
CAS 413 Actuarial Value of Assets	(Note 1)			
Market Value at January 1, 2016		$1,693,155	$11,904,328	2
Total Deferred Appreciation		(4,398)	(31,400)	3
Unlimited Actuarial Value of Assets		1,688,757	11,872,928	.....
CAS 413 Asset Corridor				
80% of Market Value of Assets		1,354,526	9,523,462	.....
Market Value at January 1, 2016		1,693,155	11,904,328	2
120% of Market Value of Assets		2,031,788	14,285,194	.....
CAS Actuarial Value of Assets	$13,561,685	1,688,757	11,872,928	4

Note 1: Because the actuarial value of assets is determined at the segment level, no values are shown for the Total Plan except as a summation at the end of the computation.
Note 2: See Table 3.
Note 3: Information taken directly from the actuarial valuation report prepared for CAS 412 and 413 purposes and supporting documentation.
Note 4: CAS Actuarial Value of Assets cannot be less than 80% of Market Value of Assets or more than 120% of Market Value of Assets.

(2) *Liabilities and Normal Costs:* (i) Long-Term Liabilities and Normal Costs: Based on the plan population data and the disclosed methods and assumptions for CAS 412 ad 413 purposes, the contractor measures the liability and normal cost on a going-concern basis using a long-term interest assumption. The liability and normal cost are shown in Table 5.

TABLE 5—"LONG-TERM" LIABILITIES AS OF JANUARY 1, 2016

	Total plan	Segment 1	Segments 2–7	Notes
Actuarial Accrued Liability	$16,525,000	$2,100,000	$14,425,000	1
Normal Cost	947,700	94,100	853,600	1
Expense Load on Normal Cost	.....	.....	.....	1

Note 1: Information taken directly from the actuarial valuation report prepared for CAS 412 and 413 purposes and supporting documentation.

(ii) Likewise, based on the plan population data and the disclosed methods and assumptions for CAS 412 and 413 purposes, the contractor measures the minimum actuarial liability and minimum normal cost on a "settlement" basis using a set of investment grade corporate bond yield rates published by the Secretary of the Treasury. This measurement is shown in Table 6.

TABLE 6—"SETTLEMENT" LIABILITIES AS OF JANUARY 1, 2016

	Total plan	Segment 1	Segments 2–7	Notes
Minimum Actuarial Liability	$15,557,000	$2,194,000	$13,363,000	1
Minimum Normal Cost	933,700	93,000	840,700	1
Expense Load on Normal Cost	82,000	8,840	73,160	1

Note 1: Information taken directly from the actuarial valuation report prepared for ERISA purposes and supporting documentation.

(3) *ERISA Contribution Range:* For ERISA purposes, the contractor can deposit any amount that satisfies the minimum contribution requirement and does not exceed the maximum tax deductible contribution amount. The ERISA minimum required and maximum tax-deductible contributions are computed for the plan as a whole. ERISA does not recognize segments or business units.

(i) Funding Shortfall (Surplus):

(A) The contractor computes the funding shortfall (the unfunded actuarial liability for ERISA purposes) as shown in Table 7.

TABLE 7—PPA FUNDING SHORTFALL AS OF JANUARY 1, 2016

	Total plan	Notes
Funding Target	$15,557,000	1
Actuarial Value of Assets for ERISA	(13,469,400)	2
Total Shortfall (Asset Surplus)	2,087,600	.....

Note 1: *See* Table 6.
Note 2: Information taken directly from the actuarial valuation report prepared for ERISA purposes and supporting documentation.

(B) The ERISA actuarial value of assets does not meet the criteria for measuring the actuarial value of assets for CAS purposes. Accordingly, there is a difference of $88,894 between the actuarial value of assets used for ERISA purposes ($13,469,400) and the asset value used for CAS purposes ($13,561,685) as developed in Table 4. However, for purposes of this computation the contractor uses the actuarial value of assets developed for ERISA purposes since this is an ERISA computation.

(ii) Minimum Required Amount: In accordance with 9904.412–50(b)(7)(iii)(C), the minimum required amount is the gross minimum contribution required by ERISA, *i.e.* the minimum required contribution unreduced by any prefunding balances. The contractor can satisfy the ERISA minimum funding requirement by depositing an amount at least equal to the minimum required contribution minus any prefunding balances, subject to certain ERISA restrictions on use of the prefunding balances. This calculation is done at the plan level in accordance with 9904.413–50(c)(7). Table 8 shows the contractor's computation of the minimum required amount (the unreduced minimum required contribution for ERISA purposes) for CAS purposes.

TABLE 8—MINIMUM REQUIRED CONTRIBUTION

	Total plan	Notes
Target Normal Cost	$933,700	1
Expense Load on Target Normal Cost	82,000	1
Shortfall Amortization Amount	576,225	2
Minimum Required Contribution	1,591,925	3
Available Prefunding Balance	(500,000)	4
ERISA Minimum Deposit	1,091,925	5

Note 1: *See* Table 6.
Note 2: Net amortization installment required for the various portions of the Funding Shortfall of $2,087,600 (Table 7) in accordance with ERISA.
Note 3: The ERISA Minimum Required Contribution is the CAS 9904.412–50(b)(7)(iii)(C) "Minimum Required Amount."
Note 4: Information taken directly from the actuarial valuation report prepared for ERISA purposes and supporting documentation
Note 5: This is the minimum deposit the contractor must make to satisfy ERISA.

(iii) Maximum Tax-Deductible Contribution: In accordance with 9904.412–50(c)(2)(iii), the assigned pension cost may not exceed the ERISA maximum tax-deductible contribution plus any accumulated value of prepayment credits. Presuming the tax-deductible contribution rules have not changed since 2008, the contractor computes the maximum tax-deductible contribution as shown in Table 9.

TABLE 9—TAX-DEDUCTIBLE MAXIMUM

	Total Plan	Notes
Funding Target	$15,557,000	1
Target Normal Cost	933,700	1
Expense Load on Target Normal Cost	82,000	1
PPA Cushion (50% Funding Target)	7,778,500	.....
Projected Liability Increment	2,505,000	2
Liability for Deduction Limit	26,856,200	.....
Actuarial Value of Assets for ERISA	(13,469,400)	3
Tax-Deductible Maximum	13,386,800	4

Note 1: *See* Table 6.
Note 2: Increase in Funding Target if salaries increases are projected.
Note 3: *See* Table 7.
Note 4: The Tax-Deductible Maximum Contribution cannot be less than the ERISA minimum required contribution developed in Table 8.

(4) *Initial Measurement of Assigned Pension Cost:* Before considering if any adjustments are required by 9904.412–50(b)(7), the contractor must first measure the pension cost for the period based on the actuarial accrued liability and normal cost valued with the long-term interest assumption and the actuarial value of assets.

(i) Measurement of the unfunded actuarial liability: The contractor measures the unfunded actuarial liability in order to compute any portions of unfunded actuarial liability to be amortized in accordance with 9904.412–50(a)(1) and 9904.412–50(a)(2). (Note that the accumulated value of prepayment credits is accounted for separately and is not included in the actuarial value of assets allocated to segments.) See Table 10.

TABLE 10—INITIAL UNFUNDED ACTUARIAL LIABILITY

	Total plan	Segment 1	Segments 2–7	Notes
Actuarial Accrued Liability	$16,525,000	$2,100,000	$14,425,000	1
CAS Actuarial Value of Assets	(13,561,685)	(1,688,757)	(11,872,928)	2
Unfunded Actuarial Liability	2,963,315	411,243	2,552,072	.....

Note 1: *See* Table 5.
Note 2: *See* Table 4.

(ii) Measurement of pension cost: The new amortization installment(s) are added to the amortization installments remaining from prior years. The pension cost for the period is measured as the normal cost plus the sum of the amortization installments. Because the long-term interest assumption implicitly recognizes expected administrative expenses, there is no separately identified increment for administrative expenses added to the normal cost. *See* Table 11.

TABLE 11—INITIAL MEASURED PENSION COST

	Total plan	Segment 1	Segments 2–7	Notes
Normal Cost	(Note 1)	$94,100	$853,600	2
Expense Load on Normal Cost				2
Net Amortization Installment		75,387	467,856	3
Measured Pension Cost	$1,490,943	169,487	1,321,456	.....

Note 1: Because the pension cost is measured at the segment level, no values are shown for the Total Plan except as a summation at the end of the computation.
Note 2: *See* Table 5.
Note 3: Net annual installment required to amortize the portions of unfunded actuarial liability, $411,243 for Segment 1 and $2,552,072 for Segments 2–7, in accordance with 9904.412–50(a)(1).

(5) *Harmonization Tests:* (i) Harmonization Threshold Test:

(A) The pension cost measured for the period is only subject to the adjustments of 9904.412–50(b)(7) if the minimum required amount for the plan exceeds the pension cost, measured for the plan as a whole. See Table 12.

TABLE 12—HARMONIZATION THRESHOLD TEST

	Total plan	Notes
	(Note 1)	
CAS Measured Pension Cost	$1,490,943	2
ERISA Minimum Required Amount	1,591,925	3

Note 1: The ERISA Minimum Required Amount is measured for the Total Plan, therefore the Harmonization Threshold Test is performed for the plan as a whole.
Note 2: *See* Table 11. CAS Measured Cost cannot be less than $0.
Note 3: *See* Table 8. The ERISA minimum required contribution unreduced for any prefunding balance.

(B) In this case, the minimum required amount is larger, and therefore the contractor proceeds to determine whether the pension cost must be adjusted in accordance with 9904.412–50(b)(7). If the minimum required amount had been equal to or less than the assigned pension cost, then the pension cost measured for the period would not be subject to the adjustment provisions of 9904.412–50(b)(7).

(ii)(A) Actuarial Liability and Normal Cost Threshold Test: The contractor compares the sum of the actuarial accrued liability plus normal cost, including any expense load, to the minimum actuarial liability plus minimum normal cost to determine whether the assigned cost for the segment must be adjusted in accordance with 9904.412–50(b)(7)(i). This comparison and determination is separately performed at the segment level in accordance with 9904.413–50(c)(2)(iii). *See* Table 13.

TABLE 13—HARMONIZATION "LIABILITY" TEST

	Total plan	Segment 1	Segments 2–7	Notes
	(Note 1)	.....	.....	.....
CAS Long-Term Liabilities:				
Actuarial Accrued Liability	.....	$2,100,000	$14,425,000	2
Normal Cost	.....	94,100	853,600	2
Expense Load on Normal Cost	.....	.....	.....	2, 3
Total Liability for Period	.....	2,194,100	15,278,600	.....
"Settlement Liabilities":				
Minimum Actuarial Liability	.....	2,194,000	13,363,000	4
Minimum Normal Cost	.....	93,000	840,700	4
Expense Load on Normal Cost	.....	8,840	73,160	4, 5
Total Liability for Period	.....	2,295,840	14,276,860	.....

Note 1: Because the liability and normal cost used to measure the pension cost is determined at the segment level, no values are shown for the Total Plan except as a summation at the end of the computation.
Note 2: *See* Table 5.
Note 3: Because the long-term interest assumption implicitly recognizes expected admin expense there is no explicit amount added to the long-term normal cost.
Note 4: *See* Table 6.
Note 5: For settlement valuation purposes the contractors explicitly identifies the expected expenses as a separate component of normal cost.

(B) As shown in Table 13, the minimum actuarial liability plus minimum normal cost ($2,295,840) exceeds the actuarial accrued liability plus normal cost ($2,194,100) for Segment 1 but not for Segments 2 through 7. Therefore, the contractor must measure the adjusted pension cost for Segment 1 only.

(6) *Measurement of Potentially Adjusted Pension Cost:* To determine whether the pension cost measured for the period must be adjusted in accordance with 9904.412–50(b)(7)(ii), the contractor measures the unfunded actuarial liability, basic pension cost, and the assignable cost limitation by substituting the minimum actuarial liability and minimum normal cost for the actuarial accrued liability and normal cost.

(i) Re-measured Unfunded Actuarial Liability (Table 14):

TABLE 14—RE-MEASURED UNFUNDED ACTUARIAL LIABILITY

	Total plan	Segment 1	Segments 2–7	Notes
Minimum Actuarial Liability		$2,194,000		1
CAS Actuarial Value of Assets		(1,688,757)		2
Unfunded Actuarial Liability		505,243		

Note 1: *See* Table 6.
Note 2: *See* Table 4.

(ii) Measurement of the Adjusted Pension Cost (Table 15):

TABLE 15—ADJUSTED PENSION COST

	Total plan	Segment 1	Segments 2–7	Notes
Minimum Normal Cost		$93,000		1
Expense Load on Normal Cost		8,840		1, 2
Re-measured Amortization Installments		88,126		3
Adjusted Pension Cost		189,966		

Note 1: *See* Table 6.
Note 2: For PPA purposes the contractors explicitly identifies the expected expenses as part of the normal cost.
Note 3: Net amortization installment based on the remeasured unfunded actuarial liability of $505,243 for Segment 1.

(7) *Harmonization of Measured Pension Cost:* For Segment 1 the contractor compares the unadjusted pension cost measured by the unadjusted actuarial accrued liability and normal cost with the adjusted pension cost re-measured by the minimum actuarial liability and minimum normal cost. Because the adjusted pension cost exceeds the unadjusted pension cost, the adjusted pension cost determines the measured pension cost for Segment 1. For Segments 2 through 7 the measured pension cost was not required to be adjusted. *See* Table 16.

TABLE 16—HARMONIZATION TEST

	Total plan	Segment 1	Segments 2–7	Notes
	(Note 1)			
(A) Unadjusted Pension Cost		$169,487	$1,321,456	2
(B) Adjusted Pension Cost		189,966	n/a	3
Harmonized Pension Cost	1,511,422	189,966	1,321,456	4

Note 1: Because the comparison of the unadjusted and adjusted pension cost is performed separately at the segment level, no values are shown for the Total Plan except as a summation at the end of the computation.
Note 2: *See* Table 11.
Note 3: *See* Table 15.
Note 4: Greater of (A) or (B).

(c) *Underfunded Segment—Assignment of Pension Cost.* In 9904.412–60.1(b) the Harmony Corporation measured the total pension cost to be $1,511,422, which is the total of the adjusted pension cost of $189,966 for Segment 1 and the unadjusted pension cost of $1,321,456 for Segments 2 through 7. The contractor must now determine if any of the limitations of 9904.412–50(c)(2) apply.

(1) *Zero Dollar Floor:* The contractor compares the measured pension cost to a zero dollar floor as required by 9904.412–50(c)(2)(i). In this case, the measured pension cost is greater than zero and no assignable cost credit is established. See Table 17.

TABLE 17—CAS 412–50(C)(2)(I) ZERO DOLLAR FLOOR

	Total plan	Segment 1	Segments 2–7	Notes
	(Note 1)			
Measured Pension Cost ≥ $0		$189,966	$1,321,456	2
Assignable Cost Credit				3

Note 1: Because the provisions of CAS 412–50(2)(i) are applied at the segment level, no values are shown for the Total Plan except as a summation at the end of the computation.
Note 2: *See* Table 16. The Measured Pension Cost is the greater of zero or the Harmonized Pension Cost.
Note 3: There is no Assignable Cost Credit since the Harmonized Pension Cost is greater than zero.

(2) *Assignable Cost Limitation:*

(i) As required by 9904.412–50(c)(2)(ii), the contractor measures the assignable cost limitation amount. The pension cost assigned to the period cannot exceed the assignable cost limitation amount. Because the measured pension cost for Segment 1 was adjusted as required by 9904.412–50(b)(7)(ii), the assignable cost limitation for Segment 1 is based on the adjusted values for the actuarial accrued liability and normal cost, including expense load. The unadjusted values of the actuarial accrued liability and normal cost, including expense load, are used to measure the assignable cost limitation for Segment 2 through 7. *See* Table 18.

TABLE 18—CAS 412–50(C)(2)(II) ASSIGNABLE COST LIMITATION

	Total plan	Segment 1	Segments 2–7	Notes
	(Note 1)			
Actuarial Accrued Liability		$2,194,000	$14,425,000	2
Normal Cost		93,000	853,600	3
Expense Load on Normal Cost		8,840		4
Total Liability for Period		2,295,840	15,278,600	
Actuarial Value of Plan Assets		(1,688,757)	(11,872,928)	5
(A) Assignable Cost Limitation Amount		607,083	3,405,672	6
(B) 412–50(c)(2)(i) Assigned Cost		189,966	1,321,456	7
(C) 412–50(c)(2)(ii) Assigned Cost	1,511,422	189,966	1,321,456	8

Note 1: Because the assignable cost limitation is applied at the segment level when pension costs are separately calculated, no values are shown for the Total Plan.
Note 2: Because the criteria of 9904.412–50(b)(7)(i) and (ii) were met for Segment 1, the Actuarial Accrued Liability has been adjusted to equal the Minimum Actuarial Liability (Table 6). The unadjusted actuarial accrued liability is used for Segments 2–7 (Table 5).
Note 3: Because the criteria of 9904.412–50(b)(7)(i) and (ii) were met for Segment 1, the Normal Cost has been adjusted to equal the Minimum Normal Cost (Table 6). The unadjusted normal cost is used for Segments 2–7 (Table 5).
Note 4: Because the criteria of 9904.412–50(b)(7)(i) and (ii) were met for Segment 1, the Normal Cost is based on the Minimum Normal Cost which explicitly identifies the expected expenses as a separate component of normal cost (Table 6). For Segments 2–7, the expected expenses are implicitly recognized in the measurement of the normal cost (Table 5).
Note 5: *See* Table 4.
Note 6: The Assignable Cost Limitation cannot be less than $0.
Note 7: *See* Table 17.
Note 8: Lesser of lines (A) or (B).

(ii) As shown in Table 18, the contractor determines that the measured pension costs for Segment 1 and Segments 2–7 does not exceed the assignable cost limitation and are not limited.

(3) *Measurement of Tax-Deductible Limitation:*

(i) Finally, after limiting the measured pension cost in accordance with 9904.412–50(c)(2)(i) and (ii), the contractor checks to ensure that the total assigned pension cost will not exceed $14,047,197, which is the sum of the maximum tax-deductible contribution ($13,386,800) as determined in Table 9 plus the accumulated value of prepayment credits ($660,397) shown in Table 3. Since the tax-deductible contribution and prepayments are maintained for the plan as a whole, these values are allocated to segments based on the assignable pension cost after adjustment, if any, for the assignable cost limitation in accordance with 9904.413–50(c)(1)(ii). See Table 19.

TABLE 19—CAS 412–50(C)(2)(III) TAX-DEDUCTIBLE LIMITATION

	Total plan	Segment 1	Segments 2–7	Notes
Maximum Deductible Amount	$13,386,800	$1,682,546	$11,704,254	1, 2
Accumulated Prepayment Credits	660,397	83,003	577,394	3, 4
(A) 412–50(c)(2)(iii) Limitation	14,047,197	1,765,549	12,281,648	
(B) 412–50(c)(2)(ii) Assigned Cost	1,511,422	189,966	1,321,456	5
Assigned Pension Cost	1,511,422	189,966	1,321,456	6

Note 1: Maximum Deductible Amount for the Total Plan is allocated to segments based on the 9904.412–50(c)(2)(ii) Assigned Cost in accordance with 9904.413–50(c)(1)(i) for purposes of this assignment limitation test.
Note 2: *See* Table 9.

Note 3: Accumulated Prepayment Credits for the Total Plan are allocated to segments based on the 9904.412–50(c)(2)(ii) Assigned Cost in accordance with 9904.413–50(c)(1)(i) for purposes of this assignment limitation test.
Note 4: *See* Table 3.
Note 5: *See* Table 18.
Note 6: Lesser of lines (A) or (B).

(ii) The assignable pension cost of $1,511,422, measured after considering the assignable cost limitation, does not exceed the 9904.412–50(c)(2)(ii) limit of $14,047,197.

(d) *Underfunded Segment—Allocation of Pension Cost.* In 9904.412–60.1(c) the Harmony Corporation determined that the assigned pension cost for the period was $1,511,422, which is the total of the assigned pension cost of $189,966 for Segment 1 and $1,321,456 for Segments 2 through 7. See Table 19. The contractor determines the amount to be contributed to the funding agency and the allocation of the assigned cost as follows:

(1) *Funding Decision:* (i) The contractor examines several different amounts to contribute to the plan. The contractor must contribute an amount equal to the assigned pension cost of $1,511,422 (Table 19) minus the accumulated value of prepayment credits of $660,397 (Table 3) for the assigned cost to be fully allocable. The minimum contribution amount that must be deposited is determined by segment is shown in Table 20.

TABLE 20—CAS FUNDING REQUIREMENT

	Total plan	Segment 1	Segments 2–7	Notes
CAS Assigned Cost	$1,511,422	$189,966	$1,321,456	1
Accumulated Value of Prepayments	(660,397)	(83,003)	(577,394)	2, 3
CAS Assigned Cost to be Funded	851,025	106,963	744,062	

Note 1: *See* Table 19.
Note 2: *See* Table 3.
Note 3: Accumulated Prepayment Credits for the Total Plan are allocated to segments based on the 9904.412–50(c)(2) Assigned Cost (Table 19) so that the prepayments are proportionally allocated to each segment's assigned pension cost.

(ii) To satisfy the minimum funding requirements of ERISA. The contractor must contribute an amount equal to the minimum required contribution minus any prefunding balances that are permitted to be applied under ERISA. If the pension plan's funding level is below certain ERISA thresholds, then the contractor may also consider including an additional contribution amount to improve the plan's funding level. In this case the plan is sufficiently funded and no additional contribution is needed. See Table 21.

TABLE 21—ERISA FUNDING REQUIREMENT

	Total plan	Notes
Gross Minimum Required Contribution	$1,591,925	1
ERISA Prefunding Credits	(500,000)	1
Net Minimum Required Contribution	1,091,925	
Additional Voluntary Contribution	.....	2
ERISA Minimum Deposit	1,091,925	3

Note 1: *See* Table 8.
Note 2: The plan is sufficiently funded and no additional contribution is needed to avoid benefit restrictions.
Note 3: To satisfy ERISA's minimum funding contribution, at least $1,091,925 must be deposited.

(iii) And finally, the contractor's financial management policy for the pension plan is to deposit an amount equal to the cost as determined by the aggregate actuarial cost method so that the liability is liquated in even payments over the years of expected service of the active employees. In this case, the plan's actuary reports that the cost under the aggregate method is $1,254,000.

(iv) Table 22 shows the contractor's determination of the possible range of contributions.

TABLE 22—CONTRIBUTION RANGE

	Total plan	Notes
CAS Assigned Cost to be Funded	$851,025	1
ERISA Minimum Required Deposit	1,091,925	2
Aggregate Method Normal Cost	1,254,000	3
Maximum Tax-Deductible Contribution	13,386,800	4

Note 1: *See* Table 20.
Note 2: *See* Table 21.
Note 3: Information taken directly from the actuarial valuation report prepared for funding policy purposes and supporting documentation.
Note 4: *See* Table 9.

(v) The contractor decides to contribute $1,091,925, which is the net ERISA minimum required contribution (MRC) after deducting any permissible prefunding balances. The contractor applies this required contribution amount toward the CAS assigned pension cost of $1,511,422 (Table 19) and then applies $419,497 ($1,511,422 − $1,091,925 (Table 21)) of the $660,397 (Table 3) accumulated value of prepayment credits to fully fund the CAS assigned pension cost for the period. The $1,091,925 is adjusted for interest and is deposited before the end of the year. The prepayment credit of $419,497 is applied as of the first day of the plan year. The funding of the assigned pension cost by segment is summarized in Table 23:

TABLE 23—FUNDING OF CAS ASSIGNED COST

	Total plan	Segment 1	Segments 2–7	Notes
CAS Assigned Cost	$1,511,422	$189,966	$1,321,456	1
ERISA Minimum Deposit	(1,091,925)	(137,241)	(954,684)	2
Remaining Cost to be Funded	419,497	52,725	366,772	.....
Regular Prepayments Credit Applied	(419,497)	(52,725)	(366,772)	3
Remaining CAS Assigned Cost	.....	.....	.....	.....
Contribution over Net MRC	.....	.....	.....	4
Unfunded (Prepaid) Cost	.....	.....	.....	5

Note 1: *See* Table 19.
Note 2: The Net Minimum Required Contribution is proportionally allocated to segments based on the Harmonized CAS Assigned Cost that must be funded to be allocable.
Note 3: Before the contractor expends any additional resources, CAS Assigned Cost is funded by application of any available prepayment credits. The prepayment credits are proportionally allocated to segments based on the Remaining Cost to be Funded that must be funded to be allocable in accordance with 9904.413–50(c)(1)(i).
Note 4: The contractor decided not to contribute any funds in excess of the ERISA minimum required contribution reduced by the prefunding balance, if any.
Note 5: When prepayment credits are used to fund the CAS assigned pension cost for the current period, the amount of prepayment credit used will be deducted from the accumulated value of prepayment credits and transferred to segments when the market value of assets are updated for the next valuation. The application of this prepayment credit will appear in the asset roll-up from 1/1/2016 to 1/1/2017.

(2)(i) Since the full $1,511,422 (Table 19) assigned cost is funded, the entire assigned cost can be allocated to intermediate and final cost objectives in accordance with 9904.412–50(d)(1). The pension benefit is determined as a function of salary, and therefore, the salary dollars of plan participants, *i.e.,* covered payroll, is used to allocate the assigned composite pension cost for Segment 2 through 7 (Table 19) among segments. Table 24 summarizes the allocation of assigned pension cost to segment.

TABLE 24—FUNDING OF CAS ASSIGNED COST

	Covered payroll	Segment allocation factor	Allocated pension cost	Notes
Direct Allocation (Segmented Cost):				
(A) Segment 1	$1,127,000	n/a	$189,966	2
Indirect Allocation (Composite Cost)		(Note 1)		
Segment 2	810,000	0.099963	132,097	3
Segment 3	1,621,000	0.200049	264,356	3
Segment 4	2,026,000	0.250031	330,405	3
Segment 5	1,158,000	0.142910	188,849	3
Segment 6	1,247,000	0.153894	203,364	3
Segment 7	1,241,000	0.153153	202,385	3
(B) Subtotal Segments 2–7	8,103,000	1.000000	1,321,456	2
Total Plan (A)+(B)	9,230,000	.....	1,511,422	2

Note 1: Allocation factor for segment = segment's covered payroll divided by the total covered payroll for segments 2 though 7, subtotal (B).
Note 2: *See* Table 19.
Note 3: Pension cost for Segments 2–7, subtotal (B), multiplied by allocation factor for the individual segment.

(ii) Once allocated to segments, the assigned pension cost is allocated to intermediate and final cost objectives in accordance with the contractor's disclosed cost accounting practice.

(e) *Overfunded Segment—Measurement of Pension Cost.* Assume the same facts as shown in 9904.412–60.1(b), (c) and (d) for Harmony Corporation except that Segment 1 has an asset surplus, the accumulated value of prepayment credits is $0 and the January 1, 2016 Market Value of Assets is $16,055,092 for the total plan.

(1) *Asset Values:* (i) Table 25 shows the market value of assets held by the Funding Agency.

TABLE 25—FUNDING AGENCY BALANCE AS OF JANUARY 1, 2016

	Total plan	Segment 1	Segments 2–7	Accumulated prepayment	Notes
Market Value at January 1, 2016	$16,055,092	$2,148,712	$13,906,380		1

Note 1: Information taken directly from the actuarial valuation report prepared for CAS 412 and 413 purposes and supporting documentation.

(ii) As before, the portion of the appreciation and depreciation that is deferred until future periods is subtracted from the market value of assets to determine the actuarial value of assets for CAS 412 and 413 purposes. The determination of the actuarial value of assets as of January 1, 2016 is summarized in Table 26.

TABLE 26—JANUARY 1, 2016 ACTUARIAL VALUE OF ASSETS

	Total plan	Segment 1	Segments 2—7	Notes
	(Note 1)			
CAS 413 Actuarial Value of Assets:				
Market Value at January 1, 2016		$2,148,712	$13,906,380	2
Total Deferred Appreciation		(5,700)	(35,200)	3
Unlimited Actuarial Value of Assets		2,143,012	13,871,180	
CAS 413 Asset Corridor:				
80% of Market Value of Assets		1,718,970	11,125,104	
Market Value at January 1, 2016		2,148,712	13,906,380	2
120% of Market Value of Assets		2,578,454	16,687,656	
CAS Actuarial Value of Assets	$16,014,192	2,143,012	13,871,180	4

Note 1: Because the actuarial value of assets is determined at the segment level, no values are shown for the Total Plan except as a summation at the end of the computation.
Note 2: *See* Table 25.
Note 3: Information taken directly from the actuarial valuation report prepared for CAS 412 and 413 purposes and supporting documentation.
Note 4: CAS Actuarial Value of Assets cannot be less than 80% of Market Value of Assets or more than 120% of Market Value of Assets.

(2) *ERISA Contribution Range:*
(i) Funding Shortfall (Surplus): The contractor computes the funding shortfall (the unfunded actuarial liability for ERISA purposes), which in this case is an asset surplus, as shown in Table 27.

TABLE 27—PPA FUNDING SHORTFALL AS OF JANUARY 1, 2016

	Total plan	Notes
Funding Target	$15,557,000	1
Actuarial Value of Assets for ERISA	(16,895,000)	2
Total Shortfall (Surplus)	(1,338,000)	

Note 1: *See* Table 6.
Note 2: Information taken directly from the actuarial valuation report prepared for ERISA purposes and supporting documentation.

(ii) Minimum Required Amount: Table 28 shows the contractor computation of the minimum required amount (the unreduced minimum required contribution for ERISA purposes).

TABLE 28—MINIMUM REQUIRED CONTRIBUTION

	Total plan	Notes
Target Normal Cost	$933,700	1
Expense Load on Target Normal Cost	82,000	1
Reduced by Asset Surplus	(1,338,000)	2
Shortfall Amortization Amount	n/a	
Minimum Required Contribution		3
Available Prefunding Balance	n/a	
ERISA Minimum Deposit		4

Note 1: *See* Table 6.
Note 2: See Table 27.
Note 3: The Minimum Required Contribution cannot be less than zero. The ERISA Minimum Required Contribution is the CAS 9904.412–50(b)(7)(iii)(C) "Minimum Required Amount."
Note 4: This is the minimum deposit the contractor must make to satisfy ERISA.

(iii) Maximum Tax-Deductible Contribution: Presuming the tax-deductible contribution rules have not changed since 2008, the contractor computes the maximum tax-deductible contribution as the sum of the funding target, target normal cost, the "cushion" amount and the increase in the funding target for salary projections minus the actuarial value of assets determined for ERISA purposes. The contractor's computation is shown in Table 29.

TABLE 29—TAX-DEDUCTIBLE MAXIMUM

	Total plan	Notes
Funding Target	$15,557,000	1
Target Normal Cost	933,700	1
Expense Load on Target Normal Cost	82,000	1
PPA Cushion (50% Funding Target)	7,778,500	.....
Projected Liability Increment	2,505,000	2
Liability for Deduction Limit	26,856,200	.....
Actuarial Value of Assets for ERISA	(16,895,000)	3
Tax-Deductible Maximum	9,961,200	.....

Note 1: *See* Table 6.
Note 2: Increase in Funding Target if salaries increases are projected.
Note 3: *See* Table 27.

(3) *Initial Measurement of Assigned Pension Cost:* The pension cost is initially measured on the actuarial accrued liability and normal cost, including any expense load, before any adjustments that might be required by 9904.412–50(b)(7)(ii).

(i) Measurement of the unfunded actuarial liability: The contractor measures the unfunded actuarial liability in order to compute any portions of unfunded actuarial liability to be amortized in accordance with 9904.412–50(a)(1) and 9904.412–50(a)(2). See Table 30.

TABLE 30—INITIAL UNFUNDED ACTUARIAL LIABILITY

	Total plan	Segment 1	Segments 2–7	Notes
Actuarial Accrued Liability	$16,525,000	$2,100,000	$14,425,000	1
CAS Actuarial Value of Assets	(16,014,192)	(2,143,012)	(13,871,180)	2
Unfunded Actuarial Liability	510,808	(43,012)	553,820	.....

Note 1: *See* Table 5.
Note 2: *See* Table 26.

(ii) Measurement of pension cost: The new amortization installment(s) are added to the amortization installments remaining from prior years. The pension cost for the period is measured as the normal cost plus the sum of the amortization installments. Because the long-term interest assumption implicitly recognizes expected administrative expenses, there is no separately identified increment for administrative expenses added to the normal cost. *See* Table 31.

TABLE 31—INITIAL MEASURED PENSION COST

	Total plan	Segment 1	Segments 2–7	Notes
Normal Cost	(Note 1)	$94,100	$853,600	2
Expense Load on Normal Cost	.....	.....	.....	2
Net Amortization Installment	.....	(4,800)	88,700	3
Measured Pension Cost	$1,031,600	89,300	942,300	.....

Note 1: Because the pension cost is measured at the segment level, no values are shown for the Total Plan except as a summation at the end of the computation.
Note 2: *See* Table 5.
Note 3: Net annual installment required to amortize the portions of unfunded actuarial liability, $(43,012), which is a surplus for Segment 1 and $553,820 for Segments 2–7, in accordance with 9904.412–50(a)(1).

(4) *Harmonization Threshold Test:* (i) The pension cost measured for the period is only subject to the adjustments of 9904.412–50(b)(7) if the minimum required amount for the plan exceeds the pension cost, measured for the plan as a whole. *See* Table 32.

TABLE 32—HARMONIZATION THRESHOLD TEST

	Total plan	Notes
	(Note 1)	

TABLE 32—HARMONIZATION THRESHOLD TEST—Continued

	Total plan	Notes
CAS Measured Pension Cost	$1,031,600	2
ERISA Minimum Required Amount		3

Note 1: The ERISA Minimum Required Amount is measured for the Total Plan, therefore the Harmonization Threshold Test is performed for the plan as a whole.
Note 2: *See* Table 31. CAS Measured Cost cannot be less than $0.
Note 3: *See* Table 28. The ERISA minimum required contribution unreduced for any prefunding balance.

(ii) In this case, the CAS measured cost is larger than the minimum required amount for all segments, and therefore the contractor does not need to determine whether the pension cost must be adjusted in accordance with 9904.412–50(b)(7). The contractor can proceed directly to checking the measured pension cost for assignability.

(f) *Overfunded Segment—Assignment of Pension Cost.* In 9904.412–60.1(e) the Harmony Corporation measured the total pension cost to be $1,031,600, which is the sum of the pension cost of $89,300 for Segment 1 and $942,300 for Segments 2 through 7. See Table 31. The contractor must now determine if any of the limitations of 9904.412–50(c)(2) apply.

(1) *Zero Dollar Floor:* The contractor compares the measured pension cost to a zero dollar floor as required by 9904.412–50(c)(2)(i) as shown in Table 33.

TABLE 33—CAS 412–50(c)(2)(i) ZERO DOLLAR FLOOR

	Total plan	Segment 1	Segments 2–7	Notes
	(Note 1)			
Measured Pension Cost ≥ $0		$89,300	$942,300	2
Assignable Cost Credit				3

Note 1: Because the provisions of CAS 412–50(2)(i) are applied at the segment level, no values are shown for the Total Plan except as a summation at the end of the computation.
Note 2: *See* Table 31. The Measured Pension Cost is the greater of zero or the Harmonized Pension Cost.
Note 3: There is no Assignable Cost Credit since the Harmonized Pension Cost is greater than zero.

(2) Assignable Cost Limitation: (i) As required by 9904.412–50(c)(2)(ii), the contractor measures the assignable cost limitation amount. The pension cost assigned to the period cannot exceed the assignable cost limitation amount. Because the measured pension costs for Segment 1 and Segments 2–7 were not subject to adjustment pursuant to 9904.412–50(b)(7)(ii), the assignable cost limitation for Segment 1 and Segments 2–7 are based on the unadjusted values of the actuarial accrued liability and normal cost, including the implicit expense load. *See* Table 34.

TABLE 34—CAS 412–50(c)(2)(ii) ASSIGNABLE COST LIMITATION

	Total plan	Segment 1	Segments 2–7	Notes
	(Note 1)			
Actuarial Accrued Liability		$2,100,000	$14,425,000	2, 3
Normal Cost		94,100	853,600	3, 4
Expense Load on Normal Cost				3, 5
Total Liability for Period		2,194,100	15,278,600	
Actuarial Value of Plan Assets		(2,143,012)	(13,871,180)	6
(A) Assignable Cost Limitation Amount		51,088	1,407,420	7
(B) 412–50(c)(2)(i) Assigned Cost		89,300	942,300	8
(C) 412–50(c)(2)(ii) Assigned Cost	$993,388	51,088	942,300	9

Note 1: Because the assignable cost limitation is applied at the segment level when pension costs are separately calculated, no values are shown for the Total Plan.
Note 2: Because the criteria of 9904.412–50(b)(7)(i) and (ii) were not met for Segment 1, the Actuarial Accrued Liability has not been adjusted.
Note 3: *See* Table 5.
Note 4: Because the criteria of 9904.412–50(b)(7)(i) and (ii) were not met for Segment 1, the Normal Cost has not been adjusted.
Note 5: Because the criteria of 9904.412–50(b)(7)(i) and (ii) were not met for Segment 1, the Normal Cost is based on the long-term Normal Cost which implicitly identifies the expected expenses within the measurement of the normal cost.
Note 6: *See* Table 26.
Note 7: The Assignable Cost Limitation cannot be less than $0.
Note 8: *See* Table 33.
Note 9: Lesser of (A) or (B). Pension cost for Segment 1 is limited by the Assignable Cost Limitation.

(ii) As shown in Table 34, the contractor determines that the measured pension cost for Segment 1 exceeds the assignable cost limitation and therefore the pension cost for Segment 1 is limited. The measured pension cost for

Segments 2–7 does not exceed the assignable cost limitation and is not limited.

(3) Measurement of Tax-Deductible Limitation: (i) Finally, after limiting the measured pension cost in accordance with 9904.412–50(c)(2)(i) and (ii), the contractor checks to ensure that the assigned pension cost will not exceed the sum of the maximum tax-deductible contribution and the accumulated value of prepayments credits. Since the tax-deductible contribution and prepayments are maintained for the plan as a whole, these values are allocated to segments based on the assignable pension cost after adjustment, if any, for the assignable cost limitation in accordance with 9904.413–50(c)(1)(ii). *See* Table 35.

TABLE 35—CAS 412–50(c)(2)(iii) TAX-DEDUCTIBLE LIMITATION

	Total plan	Segment 1	Segments 2–7	Notes
Maximum Deductible Amount	$9,961,200	$512,311	$9,449,389	1, 2
Accumulated Prepayment Credits	.....	.....	.....	3, 4
(A) 412–50(c)(2)(iii) Limitation	9,961,200	512,311	9,449,389	.....
(B) 412–50(c)(2)(ii) Assigned Cost	993,388	51,088	942,300	5
Assigned Pension Cost	993,388	51,088	942,300	6

Note 1: Maximum Deductible Amount for the Total Plan is allocated to segments based on (B) 9904.412–50(c)(2)(ii) Assigned Cost in accordance with 9904.413–50(c)(1)(i) for purposes of this assignment limitation test.
Note 2: *See* Table 29.
Note 3: Accumulated Prepayment Credits for the Total Plan are allocated to segments based on the 9904.412–50(c)(2)(ii) Assigned Cost in accordance with 9904.413–50(c)(1)(i) for purposes of this assignment limitation test.
Note 4: *See* Table 25.
Note 5: *See* Table 34.
Note 6: Lesser of lines (A) or (B).

(ii) The assignable pension cost of $993,388, measured after considering the assignable cost limitation, does not exceed $9,961,200, which is the sum of the tax-deductible maximum ($9,961,200) plus the accumulated value of prepayment credits ($0), and is therefore fully assignable to the period.

(g) *Overfunded Segment—Allocation of Pension Cost.* In 9904.412–60.1(f) the Harmony Corporation determined that the assigned pension cost for the period was $993,388, which is the total of the assigned pension cost of $51,088 for Segment 1 and $942,300 for Segments 2 through 7. (*See* Table 35.) The contractor must now determine the amount to be contributed to the funding agency and then the allocation of the assigned cost as follows:

(1) *Funding Decision:* (i) The contractor examines several different amounts to contribute to the plan. The contractor must contribute an amount equal to the assigned pension cost minus the accumulated value of prepayment credits for the assigned cost to be fully allocable. *See* Table 36.

TABLE 36—CAS FUNDING REQUIREMENT

	Total plan	Segment 1	Segments 2–7	Notes
CAS Assigned Cost	$993,388	$51,088	$942,300	1
Accumulated Value of Prepayments	0	.....	.....	2, 3
CAS Assigned Cost to be Funded	993,388	51,088	942,300	.....

Note 1: *See* Table 35.
Note 2: *See* Table 25.
Note 3: Accumulated Prepayment Credits for the Total Plan are allocated to segments based on the 9904.412–50(c)(2) Assigned Cost (Table 19) so that the prepayments are proportionally allocated to each segment's assigned pension cost.

(ii) To satisfy the minimum funding requirements of ERISA the contractor must also contribute an amount equal to the minimum required contribution minus any prefunding balances that are permitted to be applied under ERISA. If the plan's funding level is below certain ERISA thresholds, then the contractor may also consider including an additional contribution amount to improve the plan's funding level. In this case the plan is sufficiently funded and no additional contribution is needed. *See* Table 37.

TABLE 37—ERISA FUNDING REQUIREMENT

	Total plan	Notes
Gross Minimum Required Contribution	.....	1
ERISA Prefunding Credits	n/a	1
Net Minimum Required Contribution	.....	.....
Additional Voluntary Contribution	.....	2
ERISA Minimum Deposit	.....	3

Note 1: *See* Table 28.
Note 2: The plan is sufficiently funded and no additional contribution is needed to avoid benefit restrictions.
Note 3: No contribution is needed to satisfy ERISA's minimum funding contribution requirements.

(iii) And finally, the contractor's financial management policy for the pension plan is to deposit an amount equal to the cost as determined by the aggregate actuarial cost method so that the liability is liquated in even payments over the years of expected service of the active employees. In this case, the plan's actuary reports that the cost under the aggregate method is $799,000.

(iv) As shown in Table 38, the contractor determines that the possible range of contributions is:

TABLE 38—CONTRIBUTION RANGE

	Total plan	Notes
CAS Assigned Cost to be Funded	$993,388	1
ERISA Minimum Required Deposit	0	2
Aggregate Method Normal Cost	799,000	3
Maximum Tax-Deductible Contribution	9,961,200	4

Note 1: *See* Table 36.
Note 2: *See* Table 28.
Note 3: Information taken directly from the actuarial valuation report prepared for funding policy purposes and supporting documentation.
Note 4: *See* Table 29.

(v) In this case the contractor must deposit $993,388 to fully fund the assigned pension cost so that the full amount is allocable in accordance with 9904.412–50(d)(1). The contractor decides to fund $1,500,000 and build a prepayment credit/prefunding balance reserve that can be used to fund pension costs in future periods. *See* Table 39.

TABLE 39—FUNDING OF CAS ASSIGNED COST

	Total plan	Segment 1	Segments 2–7	Notes
CAS Assigned Cost	$993,388	$51,088	$942,300	1
ERISA Minimum Deposit	.....	0	0	2
Remaining Cost to be Funded	993,388	51,088	942,300	
Regular Prepayments Credit Applied	.....	.....	.....	3
Remaining CAS Assigned Cost	993,388	51,088	942,300	
Contribution over Net MRC	(1,500,000)	(51,088)	(942,300)	4
Unfunded (Prepaid) Cost	(506,612)	.....	.....	5

Note 1: *See* Table 35.
Note 2: *See* Table 28. The Net Minimum Required Contribution is proportionally allocated to segments based on the Harmonized CAS Assigned Cost that must be funded to be allocable.
Note 3: Before the contractor expends any additional resources, CAS Assigned Cost is funded by application of any available prepayment credits. The prepayment credits are proportionally allocated to segments based on the Remaining Cost to be Funded that must be funded to be allocable in accordance with 9904.413–50(c)(1)(i).
Note 4: The contractor decided not to contribute any funds in excess of the ERISA minimum required contribution reduced by the prefunding balance, if any.
Note 5: When prepayment credits are used to fund the CAS assigned pension cost for the current period, the amount of prepayment credit used will be deducted from the accumulated value of prepayment credits and transferred to segments when the market value of assets are updated for the next valuation. The application of this prepayment credit will appear in the asset roll-up from 1/1/2016 to 1/1/2017.

(2)(i) Since the full $993,388 assigned cost is funded, the entire assigned cost can be allocated to intermediate and final cost objectives in accordance with 9904.412–50(d)(1). The allocation of assigned pension cost to segment is summarized in Table 40.

TABLE 40—FUNDING OF CAS ASSIGNED COST

	Covered payroll	Segment allocation factor	Allocated pension cost	Notes
Direct Allocation (Segmented Cost)				
(A) Segment 1	$1,127,000	n/a	$51,088	2
Indirect Allocation (Composite Cost)		(Note 1)		
Segment 2	810,000	0.099963	94,195	3
Segment 3	1,621,000	0.200049	188,506	3
Segment 4	2,026,000	0.250031	235,605	3
Segment 5	1,158,000	0.142910	134,664	3
Segment 6	1,247,000	0.153894	145,014	3
Segment 7	1,241,000	0.153153	144,316	3
(B) Subtotal Segments 2–7	8,103,000	1.000000	942,300	2

TABLE 40—FUNDING OF CAS ASSIGNED COST—Continued

	Covered payroll	Segment allocation factor	Allocated pension cost	Notes
Total Plan (A)+(B)	9,230,000		993,388	2

Note 1: Allocation factor for segment = segment's covered payroll divided by the total covered payroll for segments 2 though 7, subtotal (B).
Note 2: *See* Table 36.
Note 3: Pension cost for Segments 2–7, subtotal (B), multiplied by allocation factor for the individual segment.

(ii) Once allocated to segments, the assigned pension cost is allocated to intermediate and final cost objectives in accordance with the contractors disclosed cost accounting practice.

(h) *Actuarial Gain and Loss—Change in Liability Basis.* (1) Assume the same facts shown in 9904.412–60.1(b) for the Harmony Corporation for 2016. The contractor measured the pension cost for 2015 through 2017, in accordance with 9904.412 and 9904.413 before making any adjustments pursuant to 9904.412–50(b)(7) and compared the CAS measured costs to the minimum required amounts for the same period. This comparison is shown in Table 41.

TABLE 41—HARMONIZATION THRESHOLD TEST

	Total plan 2015	Total plan 2016	Total plan 2017	Notes
CAS Measured Pension Cost	$1,426,033	$1,490,943	$1,496,497	1
ERISA Minimum Required Amount	1,266,997	1,591,925	1,386,346	2

Note 1: *See* Table 11 for 2016. CAS Measured Cost cannot be less than $0.
Note 2: *See* Table 8 for 2016. The ERISA minimum required contribution unreduced for any prefunding balance.

(2) Table 42 shows the actuarial liabilities and normal costs, including any expense loads, for 2015 through 2017.

TABLE 42—HARMONIZATION "LIABILITY" TEST

	Segment 1 2015	Segment 1 2016	Segment 1 2017	Notes
CAS Long-Term Liabilities:				
Actuarial Accrued Liability (AAL)	$1,915,000	$2,100,000	$2,305,000	1
Normal Cost (NC)	89,600	94,100	103,200	1
Expense Load on Normal Cost				1, 2
Total Liability for Period	2,004,600	2,194,100	2,408,200	
"Settlement Liabilities":				
Minimum Actuarial Liability (MAL)	1,901,000	2,194,000	2,312,000	3
Minimum Normal Cost (MNC)	83,800	93,000	100,500	3
Expense Load on Normal Cost	8,300	8,840	9,300	3, 4
Total Liability for Period	1,993,100	2,295,840	2,421,800	

Note 1: *See* Table 5 for 2016 values.
Note 2: Because the long-term interest assumption implicitly recognizes expected admin expense there is no explicit amount added to the long-term normal cost.
Note 3: *See* Table 6 for 2016 values.
Note 4: For settlement valuation purposes the contractors explicitly identifies the expected expenses as a separate component of normal cost.

(3) For 2015, the unadjusted pension cost measured in accordance with 9904.412 and 9904.413 equals or exceeds the minimum required amount and no adjustment to the actuarial accrued liability and normal cost is required by 9904.412–50(b)(7). For 2016, the minimum required amount does exceed the CAS measured pension cost and the contractor must perform the test required by 9904.412–50(b)(7)(i), and in this case the total settlement liability exceeds the total long-term liability for the period and the actuarial accrued liability and normal cost must be adjusted. This results in an adjusted actuarial accrued liability of $2,194,000, an adjusted normal cost of $93,000 and an adjusted expense load of $8,840. However, for 2017, although the total settlement liability exceeds the total long-term liability for the period, the actuarial accrued liability and normal cost are not adjusted because the unadjusted CAS pension cost equals or exceeds the minimum required amount. Table 43 shows the measurement of the unfunded actuarial liability for 2015 through 2017.

TABLE 43—UNFUNDED ACTUARIAL LIABILITY

	Segment 1 2015	Segment 1 2016	Segment 1 2017	Notes
Current Year Actuarial Liability Basis	AAL	MAL	AAL	
Actuarial Accrued Liability, Including Adjustment	$1,915,000	$2,194,000	$2,305,000	1
Actuarial Value of Assets	(1,500,000)	(1,688,757)	(1,894,486)	2
Unfunded Actuarial Liability (Actual)	415,000	505,243	410,514	.....

Note 1: *See* Table 42.
Note 2: The 2016 actuarial value of assets is developed in Table 4.

(4) Except for changes in the value of the settlement interest rate used to measure the minimum actuarial liability and minimum normal cost, there were no changes to the pension plan's actuarial assumptions or actuarial cost methods during the period of 2015 through 2017. The contractor's actuary measured the expected unfunded actuarial liability and determined the actuarial gain or loss for 2016 and 2017 as shown in Table 44.

TABLE 44—MEASUREMENT OF ACTUARIAL GAIN OR LOSS

	Segment 1 2015	Segment 1 2016	Segment 1 2017	Notes
Actual Unfunded Actuarial Liability	(Note 1)	$505,243	$410,514	2
Expected Unfunded Actuarial Liability	.....	(381,455)	(448,209)	3
Actuarial Loss (Gain)	.....	123,788	(37,695)	.....

Note 1: The determination of the actuarial gain or loss that occurred during 2014 and measured on 2015 is outside the scope of this Illustration.
Note 2: *See* Table 43.
Note 3: Information taken directly from the actuarial valuation report prepared for CAS 412 and 413 purposes and supporting documentation.

(5) According to the actuarial valuation report, the 2016 actuarial loss of $123,788 includes a $94,000 actuarial loss ($2,194,000 − $2,100,000) (Table 42) due to a change from a long-term liability to a settlement liability basis, including the effect of any change in the value of the settlement interest rate. As required by 9904.412–50(a)(1)(v), the $94,000 loss due to the change in the liability basis will be amortized as part of the total actuarial loss of $123,788 over ten years in accordance with 9904.413–50(a)(1) and (2). Similarly, the next year's valuation report shows a 2017 actuarial gain of $37,695 includes a $7,000 actuarial gain ($2,305,000 − $2,312,000) due to a change from a settlement liability back to a long-term liability basis, which includes the effect of any change in the value of the settlement interest rate. As required by 9904.412–50(a)(1)(v), the $7,000 gain due the change in the liability basis will be amortized as part of the total $37,695 actuarial gain over ten years in accordance with 9904.413–50(a)(1) and (2).

7. Section 9904.412–63 is revised to read as follows:

9904.412–63 Effective date.

(a) This Standard is effective as of [DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

(b) This Standard shall be followed by each contractor on or after the start of its next cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable in accordance with paragraph (a) of this section. The date this version of the Standard is first applicable to a contractor's cost accounting period is the "Applicability Date of the Harmonization Rule" for purposes of this Standard.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow the Standard in 9904.412 in effect prior to [*DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER*], until this Standard, effective [*DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER*], becomes applicable following receipt of a contract or subcontract to which this Standard applies.

8. Section 9904.412–64.1 is added to read as follows:

9904.412–64.1 Transition Method for Pension Harmonization.

Contractors that were subject to this Standard prior to [*DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER*] shall recognize the change in cost accounting method over the initial 5-year period of applicability, determined in accordance with 9904.412–63(c), as follows:

(a) Phase-in of the Minimum Actuarial Liability and Minimum Normal Cost Adjustments. The contractor shall recognize on a pro rata basis the actuarial accrued liability and normal cost adjustment amounts measured in accordance with 9904.412–50(b)(7)(i). The actuarial accrued liability and normal cost adjustment amounts shall be multiplied by a percentage based on the year of applicability for this amendment. The percentages are as follows: 20% First Year, 40% Second Year, 60% Third Year, 80% Fourth Year, and 100% thereafter.

(b) Transition illustration. Assume that in the second year that this amendment is applicable, Contractor J in Illustration 9904.412–60(c)(1) again measures $18 million as the actuarial accrued liability, $20 million as the minimum actuarial liability, $4 million as the normal cost and $4.5 million as the minimum normal cost. Under 9904.412–64.1(a), the $2 million excess of the minimum actuarial liability over the actuarial accrued liability and the $0.5 million excess of the minimum normal cost over the normal cost are multiplied by 40%. The actuarial accrued liability is adjusted to $18.8 million ($18 million + [40% × $2 million]) and the normal cost is adjusted to $4.2 million ($4 million + [40% × $0.5 million]).

9. Section 9904.413–30 is amended by revising paragraphs (a)(1) and (16) to read as follows:

9904.413–30 Definitions.

(a) * * *

(1) *Accrued benefit cost method* means an actuarial cost method under which units of benefits are assigned to each cost accounting period and are valued as they accrue; that is, based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial accrued liability at a plan's measurement date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the Unit Credit cost method without salary projection.)

* * * * *

(16) *Prepayment credit* means the amount funded in excess of the pension cost assigned to a cost accounting period that is carried forward for future recognition. The Accumulated Value of Prepayment Credits means the value, as of the measurement date, of the prepayment credits adjusted for investment returns and administrative expenses and decreased for amounts used to fund pension costs or liabilities, whether assignable or not.

* * * * *

10. Section 9904.413–40 is amended by revising paragraph (c) to read as follows:

9904.413–40 Fundamental requirement.

* * * * *

(c) *Allocation of pension cost to segments.* Contractors shall allocate pension costs to each segment having participants in a pension plan. A separate calculation of pension costs for a segment is required when the conditions set forth in 9904.413–50(c)(2) or (3) are present. When these conditions are not present, allocations may be made by calculating a composite pension cost for two or more segments and allocating this cost to these segments by means of an allocation base. When pension costs are separately computed for a segment or segments, the provisions of Cost Accounting Standard 9904.412 regarding the assignable cost limitation shall be based on the actuarial value of assets, actuarial accrued liability and normal cost for the segment or segments for purposes of such computations. In addition, for purposes of 9904.412–50(c)(2)(iii), the amount of pension cost assignable to a segment or segments, for the plan as a whole and apportioned among the segment(s), shall not exceed the sum of

(1) The maximum tax-deductible amount computed, plus

(2) The accumulated value of prepayment credits.

11. Section 9904.413–50 is amended by revising paragraphs (a)(2), (c)(1)(i) and (c)(7) and adding paragraphs (b)(6) and (c)(12)(viii) and (ix) to read as follows:

9904.413–50 Techniques for application.

(a) * * *

(2) For periods beginning prior to the "Applicability Date of the Harmonization Rule," actuarial gains and losses determined under a pension plan whose costs are measured by an immediate-gain actuarial cost method shall be amortized over a 15-year period in equal annual installments, beginning with the date as of which the actuarial valuation is made. For periods beginning on or after the "Applicability Date of the Harmonization Rule," such actuarial gains and losses shall be amortized over a 10-year period in equal annual installments, beginning with the date as of which the actuarial valuation is made. The installment for a cost accounting period shall consist of an element for amortization of the gain or loss plus an element for interest on the unamortized balance at the beginning of the period. If the actuarial gain or loss determined for a cost accounting period is not material, the entire gain or loss may be included as a component of the current or ensuing year's pension cost.

* * * * *

(b) * * *

(6) The market value of the assets of a pension plan shall include the present value of contributions received after the date the market value of plan assets is measured.

(i) Except for qualified defined benefit pension plans, the long-term assumed rate of interest shall be used to determine the present value of such receivable contributions as of the valuation date.

(ii) For qualified defined benefit pension plans, the present value of such receivable contributions shall be measured in accordance with ERISA

(iii) The market value of plan assets measured in accordance with paragraphs (b)(6)(i) or (ii) of this section shall be the basis for measuring the actuarial value of plan assets in accordance with this Standard.

* * * * *

(c) * * *

(1) * * *

(i) When apportioning to segments the sum of (A) the maximum tax-deductible amount, which is determined for a qualified defined-benefit pension plan as a whole pursuant to the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 et seq., as amended, plus (B) the accumulated value of the prepayment credits, the contractor shall use a base that considers the otherwise assignable pension costs or the funding levels of the individual segments.

* * * * *

(7) After the initial allocation of assets, the contractor shall maintain a record of the portion of subsequent contributions, permitted unfunded accruals, income, benefit payments, and expenses attributable to the segment and paid from the assets of the pension plan. Income (investment returns) shall include a portion of any investment gains and losses attributable to the assets of the pension plan. Income and expenses of the pension plan assets shall be allocated to the segment in the same proportion that the average value of assets allocated to the segment bears to the average value of total pension plan assets, including the accumulated value of prepayment credits, for the period for which income and expenses are being allocated.

* * * * *

(12) * * *

(viii) If a benefit curtailment is caused by a cessation of benefit accrual mandated by ERISA based on the plan's funding level, and it is expected that such accruals will recommence in a later period, then no adjustment amount for the curtailment of benefit pursuant to this paragraph (c)(12) is required. Instead, the curtailment of benefits shall be recognized as an actuarial gain or loss for the period. Likewise the recommencement of benefit accruals shall be recognized as an actuarial gain or loss in the period in which benefits recommenced. If the written plan document provides that benefit accruals will be retroactively restored, then the intervening valuations shall continue to recognize the accruals in the actuarial accrued liability and normal cost during the period of cessation.

(ix) Once determined, any adjustment credit shall be first used to reduce the accumulated value of permitted unfunded accruals. After the accumulated value of permitted unfunded accruals has been fully reduced, any remaining adjustment amount shall be accounted for as a prepayment credit. Any adjustment charge shall be accounted for as a permitted unfunded accrual to the extent that funds are not added to the fair value of assets. All unamortized balances maintained in accordance with 9904.412–50(a)(1) and 9904.413–

50(a)(1) and (2) shall be deemed immediately recognized and eliminated as part of the adjustment charge or credit. If the segment no longer exists, the accumulated value of prepayment credits, the accumulated value of permitted unfunded accruals and the balance separately identified under 9904.412–50(a)(2) shall be transferred to the former segment's immediate home office.

12. Section 9904.413–60 is amended by revising paragraphs (a) and (c)(12) and adding paragraphs (b)(3) and (c)(26) to read as follows:

9904.413–60 Illustrations.

(a) *Assignment of actuarial gains and losses.* Contractor A has a defined-benefit pension plan whose costs are measured under an immediate-gain actuarial cost method. The contractor makes actuarial valuations every other year. In the past, at each valuation date, the contractor has calculated the actuarial gains and losses that have occurred since the previous valuation date and has merged such gains and losses with the unfunded actuarial liabilities that are being amortized. Pursuant to 9904.413–40(a), the contractor must make an actuarial valuation annually and any actuarial gains or losses measured must be separately amortized over a specific period of years beginning with the period for which the actuarial valuation is made in accordance with 9904.413–50(a)(1) and (2). If the actuarial gain or loss is measured for a period beginning prior to the "Applicability Date for the Harmonization Rule," the gain or loss shall be amortized over fifteen years. For gains and losses measured for periods beginning on or after the "Applicability Date for the Harmonization Rule," the gain or loss shall be amortized over ten years.

* * * * *

(b) * * *

(3) Assume that besides the market value of assets of $10 million that Contractor B has on the valuation date of January 1, 2014, the contractor makes a contribution of $100,000 on July 1, 2014 to cover its prior year's pension cost. For ERISA purposes, the contractor measures $98,000 as the present value of the contribution on January 1, 2014 and therefore recognizes $10,098,000 as the market value of assets. The contractor must also use this market value of assets for contract costing purposes as required by 9904.413–50(b)(6)(ii). The actuarial value of assets must also reflect the $98,000 present value of the July 1, 2014 contribution.

(c) * * *

(12) Contractor M sells its only Government segment. Through a contract novation, the buyer assumes responsibility for performance of the segment's Government contracts. Just prior to the sale, the actuarial accrued liability under the actuarial cost method in use is $18 million and the market value of assets allocated to the segment is $22 million. In accordance with the sales agreement, Contractor M is required to transfer $20 million of assets to the new plan. In determining the segment closing adjustment under 9904.413–(50)(c)(12) the actuarial accrued liability and the market value of assets are reduced by the amounts transferred to the buyer by the sale. The adjustment amount, which is the difference between the remaining assets ($2 million) and the remaining actuarial liability ($0), is $2 million.

* * * * *

(26) Assume the same facts as Illustration 9904.413–60(c)(20), except that ERISA required Contractor R to cease benefit accruals. In this case, the segment closing adjustment is exempted by 9904.413–50(c)(12)(viii). If the written plan document provides that benefit accruals will automatically be retroactively reinstated when permitted by ERISA, then the actuarial accrued liability and normal cost measured for contract costing purposes shall continue to recognize the benefit accruals. Otherwise, the actuarial accrued liability and normal cost will not recognize any benefit accruals until and unless the plan is subsequently amended to reinstate the accruals. Furthermore, the decrease in the actuarial accrued liability will be measured as an actuarial gain and amortized in accordance with 9904.413–50(a)(2).

13. Section 9904.413–63 is revised to read as follows:

9904.413–63 Effective date

(a) This Standard is effective as of [*DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER*].

(b) This Standard shall be followed by each contractor on or after the start of its next cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable in accordance with paragraph (a) of this section. The date this version of the Standard is first applicable to a contractor's cost accounting period is the "Applicability Date of the Harmonization Rule" for purposes of this Standard.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow the Standard in 9904.413 in effect prior to [*DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER*], until this Standard, effective [*DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER*], becomes applicable following receipt of a contract or subcontract to which this Standard applies.

14. Section 9904.413–64.1 is added to read as follows:

9904.413–64.1 Transition Method for Pension Harmonization.

See 9904.412.64.1 Transition Method for Pension Harmonization.

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May 10, 2010

Part IV

Environmental Protection Agency

40 CFR Part 80

Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard Program; Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2005–0161; FRL–9147–6]

RIN 2060–AQ31

Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend certain of the Renewable Fuel Standard program regulations published on March 26, 2010, that are scheduled to take effect on July 1, 2010 (the "RFS2 regulations"). Following publication of the RFS2 regulations, promulgated in response to the requirements of the Energy Independence and Security Act of 2007, EPA discovered some technical errors and areas within the final RFS2 regulations that could benefit from clarification or modification. This direct final rule amends the RFS2 regulations to make the appropriate corrections, clarifications, and modifications.

DATES: This direct final rule is effective on July 1, 2010 without further notice, except to the extent that EPA receives adverse comment by June 9, 2010 or receives a request for a public hearing by May 25, 2010. If EPA receives adverse comment or a request for a hearing, we will publish a timely withdrawal in the **Federal Register** informing the public that the amendment, paragraph, or section of the rule on which adverse comment or a hearing request were received will not take effect. If a public hearing is requested, we will publish a notice in the **Federal Register** announcing the date and location of the hearing at least 14 days prior to the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0161, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov,* Attention Air and Radiation Docket ID No. EPA–HQ–OAR–2005–0161.
- *Mail:* Air and Radiation Docket, Docket No. EPA–HQ–OAR–2005–0161, Environmental Protection Agency, Mail Code: 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 copies.
- *Hand Delivery:* EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, 20460, Attention Air and Radiation Docket, ID No. EPA–HQ–OAR–2005–0161. 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–2005–0161. 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* 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 *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 information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

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FOR FURTHER INFORMATION CONTACT: Megan Brachtl, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Mail Code: 6405J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., 20460; *telephone number:* (202) 343–9473; *fax number:* (202) 343–2802; *e-mail address: brachtl.megan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is EPA using a direct final rule?

EPA is publishing this rule without a prior proposed rule because we view this as a non-controversial action and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register,** we are publishing a separate document that will serve as the proposal to adopt the provisions in this direct final rule on which adverse comments or a hearing request are filed. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, *see* the **ADDRESSES** section of this document.

If EPA receives adverse comment or a request for hearing on any portion of this rule, we will publish a timely withdrawal in the **Federal Register** informing the public that the portion of the rule on which adverse comment or a hearing request was received will not take effect. Any distinct amendment, paragraph, or section of today's rule for which we do not receive adverse comment or a hearing request will become effective on the date set out above, notwithstanding any adverse comment or hearing request on any other distinct amendment, paragraph, or section of this rule. We will address all public comments in any subsequent final rule based on the proposed rule.

II. Does this action apply to me?

Entities potentially affected by this action include those involved with the production, distribution and sale of transportation fuels, including gasoline and diesel fuel, or renewable fuels such as ethanol and biodiesel. Regulated categories and entities affected by this action include:

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated parties
Industry	324110	2911	Petroleum refiners, importers.
Industry	325193	2869	Ethyl alcohol manufacturers.
Industry	325199	2869	Other basic organic chemical manufacturers.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section above.

III. What should I consider as I prepare my comments for EPA?

A. *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.

B. *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.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

IV. Renewable Fuel Standard (RFS2) Program Amendments

EPA is taking direct final action to amend certain of the Renewable Fuel Standard regulations published on March 26, 2010, at 75 FR 14670 (the "RFS2 regulations") that are scheduled to take effect on July 1, 2010. Following publication of the RFS2 regulations, EPA discovered some technical errors and areas that could benefit from clarification or modification. As a result, we are making the following amendments to the RFS2 regulations at 40 CFR part 80, subpart M.

A. Summary of Amendments

Below is a table listing the provisions that we are amending. Many of the amendments address grammatical or typographical errors or provide clarification of language contained in the final RFS2 regulations. A few amendments are being made in order to correct regulatory language that inadvertently misrepresented our intent as reflected in the preamble to the final RFS2 regulations. We have provided additional explanation for several of these amendments in the sections IV.B through IV.M below.

RFS2 PROGRAM AMENDMENTS

Section	Description
80.1401	• Corrected typographical errors in the definitions of "advanced biofuel" and "forestland." • Deleted definition of "fractionation of feedstocks" and added definitions of "corn oil fractionation," "membrane separation," and "raw starch hydrolysis" to be consistent with terms listed as advanced technologies in Table 2 to § 80.1426. *See* Section IV.B. • Deleted definition of "yard waste," since the term "separated yard waste" is defined in the context of § 80.1426(f)(5)(i)(A). • Added definition of "actual peak capacity" (moved from § 80.1403(a)(3)) and revised definition to clarify that actual peak capacity for facilities that commenced construction prior to December 19, 2007, but that did not operate prior to 2008, should be based on any calendar year after startup during the first three years of operation. This definition was also revised to clarify that for facilities that commenced construction after December 19, 2007 but before January 1, 2010, that are fired with natural gas, biomass, or a combination thereof, the actual peak capacity is based on any calendar year after startup during the first three years of operation. • Added definition of "baseline volume" (moved from § 80.1403(a)(3)). *See* Section IV.C.

RFS2 PROGRAM AMENDMENTS—Continued

Section	Description
	• Added definition of "foreign ethanol producer" to describe foreign parties that produce ethanol for use in transportation fuel, heating oil, or jet fuel in the United States. *See* Section IV.D. • Added definition of "permitted capacity" (moved from 80.1403(a)(3)) and revised definition to clarify the dates before which permits used to establish a facility's permitted capacity must have been issued or revised. *See* Section IV.E. • Added definition of "renewable electricity" to clarify that electricity must meet the definition of renewable fuel in order to qualify for RINs. • Revised definition of "biogas" to clarify that biogas must meet the definition of renewable fuel in order to qualify for RINs. • Revised definition of "combined heat and power" to clarify meaning. *See* Section IV.B. • Revised definition of "corn oil extraction" to clarify that "DGS" means "distillers grains and solubles." *See* Section IV.B. • Revised definition of "exporter" to clarify that exported fuels must be exported from the contiguous 48 states or Hawaii. • Revised definition of "naphtha" to clarify that it can be either a blendstock or fuel blending component and need not be renewable fuel. *See* Section IV.F. • Revised definition of "non-ester renewable diesel" to clarify that it must be able to be used in an engine designed to operate on conventional diesel fuel, or be heating oil or jet fuel, and that it may also be known as renewable diesel. Also deleted requirement that non-ester renewable diesel be registered under 40 CFR part 79 for consistency with other definitions in § 80.1401. • Revised definitions of "pastureland" and "pre-commercial thinnings" to clarify meaning. • Revised definition of "Renewable Identification Number (RIN)" to clarify that a gallon-RIN represents a gallon of renewable fuel used for compliance with renewable volume obligations under § 80.1427. • Revised definition of "transportation fuel" to clarify that fuel used in ocean-going vessels is not transportation fuel under Subpart M.
80.1403(a)(1) and (a)(2); removed (a)(3)	Moved definitions of "baseline volume," "permitted capacity," and "actual peak capacity" to § 80.1401 to consolidate with other definitions.
80.1403(c)(2)	Revised to require that construction of a grandfathered renewable fuel production facility for which construction commenced prior to December 19, 2007, be complete by December 19, 2010, rather than within 36 months from the date of commencement of construction. *See* Section IV.G.
80.1405(c)	Revised definition of "$RFV_{CB,i}$" to clarify that the volume of cellulosic biofuel used to calculate the annual standard for cellulosic biofuel will either be the statutory volume or the adjusted volume in the event that EPA waives a portion of the statutory volume requirement.
80.1406(c)(1)	Revised to clarify that, unless otherwise excepted, when demonstrating compliance with the RFS2 regulations on an aggregate basis, an obligated party must include all of the refineries that it operates.
80.1406(f)	Revised to clarify that all joint owners of a gasoline or diesel refinery or import facility are subject to the liability provisions of § 80.1461(d).
80.1415(a)(1)	Corrected references to paragraphs that describe gallon equivalents for biogas and electricity.
80.1415(a)(2)	Revised to clarify that the equivalence value represents the number of gallon-RINs that can be generated for a gallon of renewable fuel.
80.1415(b)(5) and (b)(6)	Revised to clarify the equivalence values for biogas and electricity, respectively.
80.1415(c)(1)	Revised definition of variable "R" in equivalence value equation to clarify that the renewable content of a renewable fuel is based on the portion that came from renewable biomass, and that it should be expressed as a fraction, not a percentage.
80.1416(a) and (d)	Revised to clarify the circumstances under which a party may petition EPA for consideration of a D code for their renewable fuel.
80.1416(b)(2)(vi)	Revised to clarify that information submitted to EPA by a company for purposes of evaluating a new renewable fuel pathway must include the current and future quantities of feedstocks used to produce the renewable fuel, including information on current and projected yields for feedstocks that are harvested or collected.
80.1416(c)(2)	Revised to clarify that the responsible corporate officer of the company submitting a petition for evaluation of a new renewable fuel pathway must sign and certify that the petition meets all the applicable requirements.
80.1425	Amended to clarify that RINs generated after July 1, 2010, may only be generated and transferred using the EPA-Moderated Transaction System (EMTS) and will not be identified by a 38-digit code.
80.1425(i)	Revised to clarify that the value of EEEEEEEE in a batch-RIN will be determined by the number of gallon-RINs generated for the batch.
80.1426(a)(2)	Amended to clarify that renewable fuel contained in imported heating oil and jet fuel, in addition to that contained in imported transportation fuel, may qualify for RIN generation.
80.1426(c)(2)	Corrected typographical error.
80.1426(c)(3) and 80.1455(c)	Revised to clarify the conditions under which a renewable fuel producer may qualify for the temporary producer threshold and not be required to generate RINs for their renewable fuel.

RFS2 PROGRAM AMENDMENTS—Continued

Section	Description
80.1426(c)(4)	Revised to prohibit importers of renewable fuel produced by a foreign renewable fuel producer, or of renewable fuel made with ethanol produced by a foreign ethanol producer, from generating RINs for such fuel or ethanol unless the foreign renewable fuel producer or foreign ethanol producer is registered with EPA as required in § 80.1450. *See* Section IV.D.
80.1426(c)(6)	Revised to prohibit the generation of RINs for a volume of renewable fuel produced from other renewable fuel that was accompanied by RINs, either assigned or separated.
80.1426(d)(1), (f)(3)(iv), and (f)(3)(v)	Revised to clarify that a unique BBBBB code in the RIN, or its equivalent in EMTS, is used to identify a batch of renewable fuel from a given renewable fuel producer or importer.
80.1426(d)(2)(ii)	Amended to clarify that the RIN volume used to determine the last gallon-RIN of a batch of renewable fuel is identified as V_{RIN} in the equations at § 80.1426(f).
80.1426, Table 1	Revised to clarify which feedstocks may be used to produce renewable fuel, in order to be consistent with definitions at § 80.1401. Also revised to clarify the extent to which distillers grains and solubles may be dried via the application of thermal energy for renewable fuel to qualify for certain fuel pathways.
80.1426, Table 2	Revised to clarify the extent to which renewable fuel producers must use certain advanced technologies in order for them to be considered when determining the proper D code for their fuel. *See* Section IV.B.
80.1426, Table 3	Corrected typographical errors in the definitions of $V_{RIN,AB}$ and $V_{RIN,RF}$.
80.1426, Table 4	Revised definitions of different feedstock energy value ("FE") to clarify that they represent feedstock energy from all feedstocks used to produce renewable fuel with a certain D code.
80.1426(f)(4)	Revised to clarify that partially renewable fuel may be used as transportation fuel, heating oil, or jet fuel.
80.1426(f)(4)(ii)	Revised to clarify that the contribution of non-renewable feedstocks to the production of partially renewable fuel should be ignored when determining the appropriate pathway for the fuel.
80.1426(f)(5)(i)	Corrected grammatical and typographical errors in definitions of "separated yard waste," "separated food waste," and "separated municipal solid waste."
80.1426(f)(5)(iii)(B)	Revised to clarify that a renewable fuel producer who uses separated municipal solid waste as a feedstock must have evidence of all contracts relating to the disposal of the specified recyclable materials.
80.1426(f)(5)(vi)	Corrected typographical errors and added the term "separated" to "food waste" and "MSW" to be consistent with other sections.
80.1426(f)(9)(iv)(C)	Corrected typographical error.
80.1426(f)(10)	Revised to clarify the requirements for generating RINs for renewable electricity or biogas that is not commingled with fuel derived from non-renewable feedstocks.
80.1426(f)(11)	Revised to clarify the requirements for generating RINs for renewable electricity or biogas that is introduced into a commercial distribution system.
80.1426(f)(12)	Amended to clarify the requirements for gas to be considered biogas for purposes of determining a renewable fuel's D code.
80.1427(a)(4)(i)	Amended to allow RFS1 RINs with an RR code of "16" to be treated as RFS2 biomass-based diesel RINs with a D code of 4. *See* Section IV.H.
80.1427(a)(7)(i)	Amended to allow RFS1 RINs with an RR code of "16" to be subtracted from the 2010 biomass-based diesel RVO. *See* Section IV.H.
80.1428(c)	Revised to clarify that an expired RIN is considered an invalid RIN and cannot be used for compliance.
80.1429(b)(5)	Revised to clarify the requirement that the producer of renewable electricity or biogas separate any RINs they generate for a given volume of renewable electricity or biogas.
80.1429(d)	Revised to clarify that separated RINs must be accompanied by a PTD when being transferred from one party to another.
80.1429(g)	Revised to clarify that any 2009 or 2010 RINs retired because renewable fuel was used in a specific nonroad application may be reinstated by the retiring party and used for 2010 RVO compliance.
80.1430(a)	Corrected references to subsequent paragraphs in § 80.1430.
80.1430(b)(2) and (b)(3)	Revised definitions of VOL_k to eliminate redundant language.
80.1440(c)(3)	Revised to clarify that a renewable fuel blender who delegates its RIN-related responsibilities will remain liable for any violation associated with its renewable fuel blending activities.
80.1440(d) and (e)	Revised to clarify restrictions on small blenders who upward delegate their RIN responsibilities.
80.1442(b)(1), (b)(4), (c), and (d)(1)	Revised to clarify that the small refiner exemption from obligated party requirements is effective immediately for those who qualify.
80.1450(a), (b), and (c)	Revised to clarify that registration information for obligated parties and exporters of renewable fuel, renewable fuel producers (unless grandfathered), and renewable fuel importers must be submitted to and accepted by EPA no later than July 1, 2010, or 60 days prior to generating or owning RINs, whichever date comes later.
80.1450(b)	Revised to require foreign ethanol producers, as defined in § 80.1401, that produce ethanol used in renewable fuel for which RINs are generated by a United States importer to register their facilities with EPA prior to the generation of any RINs for fuel made with their ethanol. *See* Section IV.D.

RFS2 PROGRAM AMENDMENTS—Continued

Section	Description
80.1450(b)(1)(v)(A), (b)(1)(v)(B), (b)(1)(v)(C), and (b)(1)(vi); removed (b)(1)(v)(D) and (b)(1)(v)(E).	Revised to require all renewable fuel producers to submit information on their baseline production volume, including copies of applicable air permits and other documents, when registering their facility. *See* Section IV.C. Also revised to correct typographical and grammatical errors.
80.1450(b)(1)(vi)	Revised to clarify the documents required as part of registration for a renewable fuel production facility claiming grandfathered status in order to demonstrate the date that construction of the facility commenced.
80.1450(b)(1)(vii) and (b)(1)(viii)	Revised to clarify specific registration requirements for producers of renewable fuel made from separated yard waste, separated food waste, and separated municipal solid waste.
80.1450(b)(2)(i)(A)	Revised to clarify that the engineering review that must be submitted to EPA as part of the registration process for a renewable fuel production facility must be conducted by a professional engineer licensed by an appropriate state agency in the U.S. for domestic facilities, or by a foreign equivalent for foreign facilities, and that the engineer must be an independent third party. *See* Section IV.I.
80.1450(b)(2)(ii)(E)	Moved to § 80.1450(b)(2)(v) for clarity.
Added 80.1450(b)(2)(vi)	Amended to clarify that owners and operators of grandfathered renewable fuel production facilities must submit the engineering review no later than December 31, 2010. While this allowance was discussed in the preamble to the final RFS2 regulations, it was inadvertently left out of the final regulations.
80.1450(b)(3)	Moved to § 80.1450(b)(1)(iv) to clarify that a process heat fuel supply plan must be submitted as part of registration for all renewable fuel production facilities, and revised to clarify the information that must be included in such a plan. *See* Section IV.J.
80.1450(d)(2)	Revised to clarify that any renewable fuel producer who makes changes to their facility that will affect the producer's registration information but will not affect the renewable fuel category for which the producer is registered must update their registration information seven (7) days prior to the change. *See* Section IV.K.
80.1450(e)	Revised to clarify that registration information for RIN owners must be submitted to EPA at least 30 days prior to RIN ownership.
80.1450(f)	Revised to clarify that any renewable fuel facility that claims grandfathered status under RFS2 must register with EPA no later than July 1, 2013.
80.1451(a)(1)(xi)	Revised to clarify that the annual compliance report that must be submitted by obligated parties and exporters of renewable fuel must include a list of all RINs retired for compliance in the reporting period.
80.1451(b)(1)(ii)(D)	Corrected typographical error.
80.1451(b)(1)(ii)(H)	Revised to clarify that RIN generators must report the fuel type of each batch in their RIN generation reports.
80.1451(b)(1)(ii)(K) and (b)(1)(ii)(N)	Revised to require information on quantities, rather than volume, of renewable fuel feedstocks and co-products, since feedstocks and co-products can be measured in mass or volume.
80.1451(b)(1)(ii)(M)	Deleted "of renewable fuel" to make language consistent with other reporting elements required under § 80.1454(b)(1)(ii).
80.1451(b)(1)(ii)(P) and (b)(1)(ii)(Q)	Revised to clarify reporting requirements for producers and importers, as appropriate, of renewable electricity and biogas used for transportation and producers and importers of renewable fuel produced at facilities that use biogas for process heat. Specifically, these amendments clarify that the renewable electricity and biogas should be reported as total energy used (*i.e.,* kW or BTU) rather than as a rate (kW/hr or BTU/hr).
80.1451(b)(1)(ii)(R)	Added the term "separated" to "municipal solid waste" to be consistent with other sections. Also revised to clarify that the amount of separated MSW used for renewable fuel that is produced or imported should be in units of weight (in tons).
80.1451(c)(1)(iii)(D) and (c)(2)(xv)	Revised to clarify that reinstatement should apply to all RFS1 RINs generated in 2009 or 2010.
80.1451(d) and (d)(1)	Revised to clarify that producers and RIN-generating importers of renewable fuel made from feedstocks not covered by the aggregate compliance approach must submit quarterly reports containing information on their feedstocks, including a summary of the types and quantities of feedstocks used in that quarter.
80.1451(e)	Revised to clarify requirements for quarterly reporting on feedstocks by producers of renewable fuel that is made from feedstocks covered by the aggregate compliance approach if the 2007 baseline amount of U.S. agricultural land is found to have been exceeded.
80.1452(b)	Revised to clarify that RINs must be generated in EMTS within five (5) business days of being assigned to a batch of renewable fuel. This paragraph is also revised to clarify the information required to be submitted via EMTS for each batch of renewable fuel produced or imported.
80.1452(c)	Revised to clarify that transactions involving RINs generated on or after July 1, 2010 must be conducted via EMTS within five (5) business days of a reportable event. This paragraph is also revised to clarify the meaning of the term "reportable event" and to clarify the information required to be submitted via EMTS for each transaction involving RINs generated on or after July 1, 2010.
80.1453(a)(5)	Deleted the requirement for price to appear on the PTD. Although parties do not need to convey price information on the PTD, parties must still be in agreement on whether they will submit the price per RIN or price per gallon of renewable fuel to EMTS.
80.1453(a)(7), (a)(8), and (a)(10)	Revised to clarify the information required on product transfer documents (PTDs) that accompany renewable fuel or separated RINs.

RFS2 PROGRAM AMENDMENTS—Continued

Section	Description
80.1453(a)(11)(i)	Revised to clarify the RIN information required on PTDs for RFS1 and RFS2 RINs, since RFS2 RINs may be transferred uniquely or generically in EMTS. Section 80.1453(a)(11)(i) currently does not identify the information for RFS1 and RFS2 RINs that must be transferred on a PTD.
80.1453(a)(11)(ii)	Revised to reference the identifying information required on a PTD for RFS1 and RFS2 RINs.
80.1454(a)(2)	Revised to clarify that obligated parties and exporters are not required to keep the production outlook reports in § 80.1449.
80.1454(a)(3)(iv)	Revised to clarify the records that obligated parties and exporters of renewable fuel must keep related to RIN transactions and their terms.
Added 80.1454(a)(6)	Amended to clarify that exporters must maintain invoices, BOLs and other documents related to the purchase, transfer and export of renewable fuel.
80.1454(c)(1)(i), (c)(1)(ii), (d)(3), and (g); added (d)(4).	Revised to clarify that the aggregate compliance approach applies to planted crops and crop residue from agricultural land in the U.S. *See* Section IV.L.
80.1454(c)(2)(ii)	Deleted allowance that duplicate copies of reports submitted to EPA are not required, since this language is not necessary.
80.1454(d)	Amended heading to be formatted consistently when printed in the **Federal Register**.
80.1454(d)(3)	Amended to clarify that domestic renewable fuel producers that use separated yard and food waste are subject to additional recordkeeping requirements located at § 80.1454(j). This provision was also renumbered as (d)(4). *See* Section IV.M.
80.1454(g) and (h)	Revised to include RIN-generating importers of renewable fuel made from planted crops or crop residue from U.S. agricultural land under the aggregate compliance approach for renewable biomass.
80.1454(g)(2)(ii)	Corrected typographical error and reference within paragraph (g)(2)(ii).
80.1454(h)(6)(v)	Revised to clarify that EPA may revoke approval of a survey plan if it determines that the approved survey plan was not fully implemented.
80.1454(j)	Added the term "solid" to "separated municipal waste" to be consistent with other sections.
80.1454(j)(2)(iii); added (j)(2)(iv)	Amended to require renewable fuel producers who use separated municipal solid waste as feedstock for renewable fuel to maintain records that demonstrate the fuel sampling methods used and the results of all fuel analyses to determine the non-fossil fraction of the fuel.
80.1454(k)	Revised to clarify recordkeeping requirements for a renewable fuel producer that generates RINs for biogas or electricity produced from renewable biomass.
80.1455(a), (b), (c), and (d)	Corrected typographical errors.
80.1460(c)(2); removed 80.1460(c)(3)	Revised to eliminate redundant language.
80.1463(a)	Corrected typographical error.
80.1463(b)	Revised to clarify that any person that fails to meet their RVOs, or causes another person to fail to meet their RVOs during any compliance period, is subject to a separate day of violation for each day in the compliance period.
80.1464(a)(1)(i)(A)	Corrected references to paragraphs in § 80.1430.
80.1464(a)(1)(iv)(A)	Corrected typographical error.
80.1464(a)(1)(iv)(D); removed 80.1464(a)(1)(vii)	Revised to clarify the attest procedures specific to an exporter of renewable fuel and deleted the requirement that each exporter's RVO be calculated from a sampling of renewable fuel batches, as doing so is infeasible.
80.1464(b)(1)(i)	Corrected references to paragraphs (d) and (e).
80.1464(b)(1)(ii)	Revised to clarify that the number of gallon-RINs must be computed for each batch of renewable fuel produced or imported by a RIN generator as part of the attest engagement requirements.
80.1464(c)(2)(ii)	Corrected typographical error.
80.1465(a)(6)	Restructured paragraph to clarify meaning.
80.1465(d)(1)(ii)	Revised to clarify that the volume of imported RFS–FRFUEL must be temperature-corrected to 60 °F.

B. Advanced Technologies for Renewable Fuel Pathways

The final RFS2 rule includes two corn ethanol pathways in Table 1 of § 80.1426 that require the use of advanced technologies at the production facility as a prerequisite to the generation of RINs. The advanced technologies are listed in Table 2 of § 80.1426. However, only three of these advanced technologies are explicitly defined in § 80.1401. To clarify our intent with regard to implementation of these advanced technologies, we have created new definitions for membrane separation and raw starch hydrolysis. We also replaced the existing definition of "fractionation of feedstocks" with the definition for "corn oil fractionation" to be more consistent with the terminology used in Table 2 of § 80.1426. Finally, we modified the definition of "combined heat and power (CHP)" and clarified in Table 2 of § 80.1426 the degree to which it, as well as the other advanced technologies, must be implemented in order to represent a valid advanced technology for the generation of RINs.

C. Baseline Production Volume for All Renewable Fuel Production Facilities

Section 80.1450(b)(1)(v) currently requires information pertinent to facilities described in § 80.1403(c) and (d), i.e., those facilities for which the renewable fuel would be exempted ("grandfathered") from the requirement of 20 percent GHG emission reduction. This amendment modifies § 80.1450(b)(1)(v) to require all renewable fuel producers to include information on their facilities' baseline volume when registering for RFS2 in order for EPA to verify renewable fuel

production volumes and RIN generation reports. Specifically, all owners and operators of renewable fuel facilities, including those described in § 80.1403(c) and (d), must submit copies of their most recent air permits. In addition, the facilities described in § 80.1403(c) must submit copies of air permits issued no later than December 19, 2007; those described in § 80.1403(d) must submit copies of air permits issued no later than December 31, 2009. Thus, for those facilities we will have information on permitted capacity for 2007 and 2009 from which baseline volumes will be determined. We will also have the most recent permitted capacity for those facilities. In case of discrepancies in permitted capacity between the most recent permits and those representing operation in 2007 and 2009, EPA may ask for additional information. The information required to establish when construction of the grandfathered facilities commenced is now contained in § 80.1450(b)(vi), since § 80.1450(b)(v) now addresses only baseline volume.

D. Foreign Ethanol Producers

We have added a new definition of "foreign ethanol producer" to § 80.1401 that describes foreign producers that produce ethanol for use in transportation fuel, heating oil or jet fuel but who do not add denaturant to their product, and therefore do not technically produce "renewable fuel" as defined in our regulations. We have also added amendments to the registration provisions at § 80.1450(b) to require the registration of these parties if the ethanol they produce is used to make renewable fuel for which RINs are ultimately generated. The result of these changes is to require foreign ethanol facilities that produce ethanol that ultimately becomes part of a renewable fuel for which RINs are generated to provide EPA the same registration information as foreign renewable fuel facilities that export their product to the United States. In both cases the required registration information is important for enforcement purposes, including verifying the use of renewable biomass as feedstock and the assignment of appropriate D codes. The changes made today conform the regulations to EPA's intent at the time the RFS2 regulations were issued.

E. Permitted Capacity

EPA is modifying the definition of "permitted capacity" to reference the specific permits, by year, which are to be used in establishing the permitted capacity of facilities claiming the exemptions specified in § 80.1403(c) and (d). Permitted capacity is one means by which "baseline volume" is determined for purposes of these exemptions. The registration provisions in the existing regulations at § 80.1450(b)(1)(v)(C) accurately identify the permits (by year) that are relevant in establishing "permitted capacity" for facilities claiming the exemptions in § 80.1403(c) and (d), but EPA neglected to include comparable references in the existing definition of "permitted capacity." Today's amendments will help to clarify the regulations by adding comparable references in the definition of "permitted capacity."

F. Definition for "Naphtha"

The final RFS2 rule includes the term naphtha in Table 1 to § 80.1426 in the form of both "naphtha" and "cellulosic naphtha." The final rule also includes a definition of naphtha in § 80.1401 indicating that naphtha must be a renewable fuel or fuel blending component. Since naphtha is generally not used as transportation fuel in its neat form, requiring naphtha to be renewable fuel could cause confusion. Therefore, we have modified the definition of naphtha to indicate that it must be a blendstock or fuel blending component.

G. Grandfathering Exemption for Renewable Fuel Production Facilities

Section 80.1403(c)(2) requires as a condition of the exemption from the 20 percent greenhouse gas (GHG) emission reduction that construction of the renewable fuel facility be completed within 36 months of commencement. In the proposed RFS2 rule, however, the regulatory language required completion of construction within 36 months of EISA enactment, which would be December 19, 2010. In preparing the final rulemaking package we mistakenly removed the proposed language. Today's rule provides that construction must be completed within 36 months of December 19, 2007, for facilities that commenced construction prior to that date. For facilities that commenced construction after that date, as described in § 80.1403(d), the requirement remains that construction must be completed within three years of commencement of construction.

H. Use of RFS1 RINs for RFS2 Compliance in 2010

The RFS2 final rule allows RFS1 RINs to be used for compliance purposes under RFS2. With regard to biodiesel and renewable diesel, the regulations at § 80.1427(a)(4)(i) indicate that RFS1 RINs with a D code of 2 and RR code of 15 or 17 may be deemed equivalent to an RFS2 RIN with a D code of 4 representing biomass-based diesel. The RR codes of 15 and 17 were included in this provision because they are indicative of biodiesel and renewable diesel, respectively, as described in the assignment of Equivalence Values in § 80.1415. However, EPA also approved an Equivalence Value of 1.6 for a particular renewable fuel diesel substitute that is compositionally similar to biodiesel. Therefore, we are modifying the RFS1/RFS2 transition provisions at § 80.1427(a)(4)(i) to also allow RFS1 RINs with a D code of 2 and RR code of 16 to be deemed equivalent to an RFS2 RIN with a D code of 4.

I. Engineering Review

Section 80.1450(b)(2)(i)(A) and (b)(2)(i)(B) are amended to clarify the types of professional engineers who may qualify to conduct the third-party engineering review for renewable fuel facilities located in the United States or in a foreign country. The original requirements in the final regulations in § 80.1450(b)(2)(i)(A) state that domestic renewable fuel production facilities must have an engineering review conducted by a "Professional Chemical Engineer." For foreign facilities, § 80.1450(b)(2)(i)(B) provides that the review should be conducted by "a licensed professional engineer or foreign equivalent who works in the chemical engineering field." EPA interprets these provisions similarly but is amending the regulations to clarify that the requirements are the same. For both domestic and foreign facilities the third party engineering review should be conducted by a professional engineer (or foreign equivalent) who works in the chemical engineering field. EPA views renewable fuel production to fall generally within the chemical engineering field, and is amending the regulation to clarify that professional work experience related to renewable fuel production will satisfy this requirement. As required in § 80.1450(b)(2)(ii)(E), the professional engineer shall provide to EPA documentation of their qualifications to conduct the engineering review, including but not limited to proof of a license as a professional engineer and relevant work experience. Additional language is added to clarify that the professional engineer must also be an independent third-party, which is further defined in § 80.1450(b)(2)(ii), to qualify to conduct the engineering review.

J. Process Heat Fuel Supply Plan

The requirements for the process heat fuel supply plan were moved from

§ 80.1450(b)(3) and inserted under § 80.1450(b)(1)(iv) in these amendments to minimize duplicative requirements and to provide clear instruction that the process heat fuel supply plan is required to be submitted as part of registration and will be subject to verification in the engineer review required in § 80.1450(b)(2).

The requirements for the process heat fuel supply plan have been divided into two subparts. Section 80.1450(b)(1)(iv)(A) is applicable to all renewable fuel producers and requires submissions of information on any process heat fuel that is used at a renewable fuel facility. Examples of process heat fuel include biomass, biogas, coal, and natural gas. The information submitted on the type of process heat fuel and its supply source will help EPA determine if a renewable fuel facility qualifies as a grandfathered facility pursuant to § 80.1403(d) and help verify a producer's fuel pathway pursuant to Table 1 to § 80.1426.

The required information in § 80.1450(b)(1)(iv)(B) for renewable fuel producers using biogas as process heat fuel will help EPA verify the contractual pathway of the biogas from the supplier to the renewable fuel facility for the purposes of confirming the applicable fuel pathway pursuant to Table 1 to § 80.1426 and to § 80.1426(f)(12).

The information submitted under § 80.1450(b)(1)(iv)(A) and (b)(1)(iv)(B) will also help EPA in our evaluation of the engineering review that is conducted and submitted by an independent third party engineer pursuant to § 80.1450(b)(2). Since the requirements for the process heat fuel supply plan have been revised and relocated within the regulations, the requirements stipulated in the original § 80.1450(b)(3)(ii) through (iv) have been deleted to avoid redundancy.

K. Updating Registration To Account for Facility Changes Not Affecting the Renewable Fuel Category

Section 80.1450(d)(2) currently requires producers of renewable fuel to update their facility registration seven (7) days prior to any change to the facility that does not affect the renewable fuel category for which the producer is registered. EPA is revising § 80.1450(d)(2) to narrow the scope of changes that would require a producer to update their registration. The revisions clarify that not just any change, but only changes to the facility that actually affect the information submitted to EPA in the producer's original registration, will trigger such a registration update.

L. Applicability of the Renewable Biomass Aggregate Compliance Approach

Sections 80.1451 and 80.1454 include requirements for renewable fuel producers to report and maintain records to affirm that their feedstocks meet the definition of renewable biomass and come from qualifying land. Through amendments to these two sections, EPA is clarifying our intent, as discussed in the preamble to the final RFS2 regulations, that producers, either domestic or foreign, who use crops and crop residue from existing U.S. agricultural land are covered by the renewable biomass aggregate compliance approach for those particular feedstocks, as described in § 80.1454(g), and need not keep detailed records or report to EPA concerning whether those particular feedstocks meet the definition of renewable biomass. However, if a producer (domestic or foreign) uses any type of feedstock other than crops and crop residue from existing U.S. agricultural land, then he or she must keep records and report to EPA to demonstrate that their feedstocks meet the definition of renewable biomass. This includes maintaining records that show that the feedstock type is one allowed under the renewable biomass definition under the RFS2 regulations and that the feedstock is harvested from qualifying lands, where applicable.

M. Additional Recordkeeping Requirements for Renewable Fuel Producers Using Separated Yard and Food Waste as a Feedstock

Section 80.1454(d)(3) currently requires that domestic renewable fuel producers using feedstock other than planted trees or tree residue from actively managed tree plantations, slash or pre-commercial thinnings from non-federal forestland, biomass from areas at risk of wildfire, crops or crop residue covered by the aggregate compliance approach under § 80.1454(g), or any feedstock covered by an alternative biomass tracking approach under § 80.1454(h) must maintain documents from their feedstock supplier certifying that their feedstocks meet the definition of renewable biomass. While separated yard and food waste falls into this category, parties using these feedstocks are also subject to the additional recordkeeping requirements in § 80.1454(j). Therefore, EPA is revising § 80.1454(d)(3) to clarify that renewable fuel producers that use separated yard and food waste as a feedstock are subject to the additional requirements in § 80.1454(j).

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The corrections, clarifications, and modifications to the final RFS2 regulations contained in this rule are within the scope of the information collection requirements submitted to the Office of Management and Budget (OMB) for the final RFS2 regulations. OMB has partially approved the information collection requirements contained in the existing regulations at 40 CFR part 80, subpart M under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0637. The remaining RFS2 information collection requirements are currently pending approval at OMB (EPA ICR No. 2333.02). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

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 a 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 today's rule 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 which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not impose any requirements on small entities that were not already considered under the final RFS2 regulations, as it makes relatively minor corrections and modifications to those regulations.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. We have determined that this action will not result in expenditures of $100 million or more for the above parties and thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 regulations.

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. This action only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 regulations. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This direct final rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. This action makes relatively minor corrections and modifications to the RFS regulations, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 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 EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This rule is not subject to Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider 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 direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. These technical amendments do not relax the control measures on sources regulated by the RFS regulations and therefore will not cause emissions increases from these sources.

K. 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).

L. Clean Air Act Section 307(d)

This rule is subject to Section 307(d) of the CAA. Section 307(d)(7)(B) provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for the EPA to

convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to the EPA should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Agriculture, Air pollution control, Confidential business information, Diesel Fuel, Energy, Forest and Forest Products, Fuel additives, Gasoline, Imports, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: April 30, 2010.

Lisa P. Jackson,

Administrator.

■ For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7542, 7545, and 7601(a).

■ 2. Section 80.1401 is amended as follows:

■ a. By revising the definitions of "Advanced biofuel", "Biogas", "Combined heat and power (CHP)", "Corn oil extraction", "Exporter of renewable fuel", "Forestland", "Naphtha", "Non-ester renewable diesel", "Pastureland", "Pre-commercial thinnings", "Renewable Identification Number (RIN)", and "Transportation fuel".

■ b. By removing the definitions of "Fractionation of feedstocks" and "Yard waste".

■ c. By adding definitions of "Actual peak capacity", "Baseline volume", "Corn oil fractionation", Foreign ethanol producer", "Membrane separation", "Permitted capacity", "Raw starch hydrolysis", and "Renewable electricity", in alphabetical order.

§ 80.1401 Definitions.

* * * * *

Actual peak capacity means 105% of the maximum annual volume of renewable fuels produced from a specific renewable fuel production facility on a calendar year basis.

(1) For facilities that commenced construction prior to December 19, 2007, the actual peak capacity is based on the last five calendar years prior to 2008, unless no such production exists, in which case actual peak capacity is based on any calendar year after startup during the first three years of operation.

(2) For facilities that commenced construction after December 19, 2007 and before January 1, 2010 that are fired with natural gas, biomass, or a combination thereof, the actual peak capacity is based on any calendar year after startup during the first three years of operation.

(3) For all other facilities not included above, the actual peak capacity is based on the last five calendar years prior to the year in which the owner or operator registers the facility under the provisions of § 80.1450, unless no such production exists, in which case actual peak capacity is based on any calendar year after startup during the first three years of operation.

Advanced biofuel means renewable fuel, other than ethanol derived from cornstarch, that has lifecycle greenhouse gas emissions that are at least 50 percent less than baseline lifecycle greenhouse gas emissions.

* * * * *

Baseline volume means the permitted capacity or, if permitted capacity cannot be determined, the actual peak capacity of a specific renewable fuel production facility on a calendar year basis.

* * * * *

Biogas means a mixture of hydrocarbons that is a gas at 60 degrees Fahrenheit and 1 atmosphere of pressure that is produced through the conversion of organic matter. Only biogas that is used as renewable fuel can generate RINs. Biogas includes propane, landfill gas, manure digester gas, and sewage waste treatment gas.

* * * * *

Combined heat and power (CHP), also known as cogeneration, refers to industrial processes in which waste heat from the production of electricity is used for process energy in the renewable fuel production facility.

* * * * *

Corn oil extraction means the recovery of corn oil from the thin stillage and/or the distillers grains and solubles produced by a dry mill corn ethanol plant, most often by mechanical separation.

Corn oil fractionation means a process whereby seeds are divided in various components and oils are removed prior to fermentation for the production of ethanol.

* * * * *

Exporter of renewable fuel means:

(1) A person that transfers any renewable fuel from a location within the contiguous 48 states or Hawaii to a location outside the contiguous 48 states and Hawaii; and

(2) A person that transfers any renewable fuel from a location in the contiguous 48 states or Hawaii to Alaska or a United States territory, unless that state or territory has received an approval from the Administrator to opt-in to the renewable fuel program pursuant to § 80.1443.

* * * * *

Foreign ethanol producer means a person from a foreign country or from an area that has not opted into the program requirements of this subpart who produces ethanol for use in transportation fuel, heating oil, or jet fuel but who does not add denaturant to their product as described in paragraph (2) of the definition of renewable fuel in this section.

Forestland is generally undeveloped land covering a minimum area of 1 acre upon which the primary vegetative species are trees, including land that formerly had such tree cover and that will be regenerated and tree plantations. Tree-covered areas in intensive agricultural crop production settings, such as fruit orchards, or tree-covered areas in urban settings, such as city parks, are not considered forestland.

* * * * *

Membrane separation means the process of dehydrating ethanol to fuel grade (> 99.5% purity) using a hydrophilic membrane.

* * * * *

Naphtha means a blendstock or fuel blending component falling within the boiling range of gasoline.

* * * * *

Non-ester renewable diesel, also known as renewable diesel, means renewable fuel which is all of the following:

(1) A fuel which can be used in an engine designed to operate on conventional diesel fuel, or be heating oil or jet fuel.

(2) Not a mono-alkyl ester.

* * * * *

Pastureland is land managed for the production of select indigenous or introduced forage plants for livestock grazing or hay production, and to prevent succession to other plant types.

Permitted capacity means 105% of the maximum permissible volume output of renewable fuel that is allowed under operating conditions specified in the most restrictive of all applicable preconstruction, construction and operating permits issued by regulatory authorities (including local, regional, state or a foreign equivalent of a state, and federal permits, or permits issued by foreign governmental agencies) that govern the construction and/or operation of the renewable fuel facility, based on an annual volume output in a calendar year basis. If the permit specifies maximum rated volume output on an hourly basis, then annual volume output is determined by multiplying the hourly output by 8,322 hours per year.

(1) For facilities that commenced construction prior to December 19, 2007, the permitted capacity is based on permits issued or revised no later than December 19, 2007.

(2) For facilities that commenced construction after December 19, 2007 and before January 1, 2010 that are fired with natural gas, biomass, or a combination thereof, the permitted capacity is based on permits issued or revised no later than December 31, 2009.

(3) For facilities other than those described in paragraphs (1) and (2) of this definition, permitted capacity is based on the most recent applicable permits.

* * * * *

Pre-commercial thinnings are trees, including unhealthy or diseased trees, removed to reduce stocking to concentrate growth on more desirable, healthy trees, or other vegetative material that is removed to promote tree growth.

Raw starch hydrolysis means the process of hydrolyzing corn starch into simple sugars at low temperatures, generally not exceeding 100 °F (38 °C), using enzymes designed to be effective under these conditions.

* * * * *

Renewable electricity means electricity that meets the definition of renewable fuel.

* * * * *

Renewable Identification Number (RIN), is a unique number generated to represent a volume of renewable fuel pursuant to §§ 80.1425 and 80.1426.

(1) *Gallon-RIN* is a RIN that represents an individual gallon of renewable fuel used for compliance purposes pursuant to § 80.1427 to satisfy a renewable volume obligation.

(2) *Batch-RIN* is a RIN that represents multiple gallon-RINs.

* * * * *

Transportation fuel means fuel for use in motor vehicles, motor vehicle engines, nonroad vehicles, or nonroad engines (except fuel for use in ocean-going vessels).

* * * * *

■ 3. Section 80.1403 is amended as follows:

■ a. By revising paragraph (a).

■ b. By revising paragraph (c)(2).

■ c. By revising paragraphs (d) introductory text and (d)(3).

§ 80.1403 Which fuels are not subject to the 20% GHG thresholds?

(a) For purposes of this section, the following definitions apply:

(1) *Commence construction,* as applied to facilities that produce renewable fuel, means that:

(i) The owner or operator has all necessary preconstruction approvals or permits (as defined at 40 CFR 52.21(b)(10)), and has satisfied either of the following:

(A) Begun, or caused to begin, a continuous program of actual construction on-site (as defined in 40 CFR 52.21(b)(11)).

(B) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the facility.

(ii) For multi-phased projects, the commencement of construction of one phase does not constitute commencement of construction of any later phase, unless each phase is mutually dependent for physical and chemical reasons only.

(2) [Reserved]

* * * * *

(c) * * *

(2) Completed construction by December 19, 2010.

(d) The baseline volume of ethanol that is produced from facilities and any expansions all of which commenced construction after December 19, 2007 and on or before December 31, 2009, shall not be subject to the requirement that lifecycle greenhouse gas emissions be at least 20 percent less than baseline lifecycle greenhouse gas emissions if such facilities are fired with natural gas, biomass, or a combination thereof at all times the facility operated between December 19, 2007 and December 31, 2009 and if:

* * * * *

(3) The baseline volume continues to be produced through processes fired with natural gas, biomass, or any combination thereof.

* * * * *

■ 4. Section 80.1405 is amended by revising paragraph (c) to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

* * * * *

(c) EPA will calculate the annual renewable fuel percentage standards using the following equations:

$$\mathrm{Std}_{\mathrm{CB,\,i}} = 100 * \frac{\mathrm{RFV}_{\mathrm{CB,\,i}}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{\mathrm{BBD,\,i}} = 100 * \frac{\mathrm{RFV}_{\mathrm{BBD,\,i}} \times 1.5}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{\mathrm{AB,\,i}} = 100 * \frac{\mathrm{RFV}_{\mathrm{AB,\,i}}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

$$\mathrm{Std}_{\mathrm{RF,\,i}} = 100 * \frac{\mathrm{RFV}_{\mathrm{RF,\,i}}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

Where:

$\mathrm{Std}_{\mathrm{CB,i}}$ = The cellulosic biofuel standard for year i, in percent.

$\mathrm{Std}_{\mathrm{BBD,i}}$ = The biomass-based diesel standard for year i, in percent.

$\mathrm{Std}_{\mathrm{AB,i}}$ = The advanced biofuel standard for year i, in percent.

$\mathrm{Std}_{\mathrm{RF,i}}$ = The renewable fuel standard for year i, in percent.

$\mathrm{RFV}_{\mathrm{CB,i}}$ = Annual volume of cellulosic biofuel required by section 211(o)(2)(B) of the Clean Air Act for year i, or volume as adjusted pursuant to section 211(o)(7)(D) of the Clean Air Act, in gallons.

$\mathrm{RFV}_{\mathrm{BBD,i}}$ = Annual volume of biomass-based diesel required by section 211(o)(2)(B) of the Clean Air Act for year i, in gallons.

$\mathrm{RFV}_{\mathrm{AB,i}}$ = Annual volume of advanced biofuel required by section 211(o)(2)(B) of the Clean Air Act for year i, in gallons.

$\mathrm{RFV}_{\mathrm{RF,i}}$ = Annual volume of renewable fuel required by section 211(o)(2)(B) of the Clean Air Act for year i, in gallons.

G_i = Amount of gasoline projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons.

D_i = Amount of diesel projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons.

RG_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

RD_i = Amount of renewable fuel blended into diesel that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

GS_i = Amount of gasoline projected to be used in Alaska or a U.S. territory, in year i, if the state or territory has opted-in or opts-in, in gallons.

RGS_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska or a U.S. territory, in year i, if the state or territory opts-in, in gallons.

DS_i = Amount of diesel projected to be used in Alaska or a U.S. territory, in year i, if the state or territory has opted-in or opts-in, in gallons.

RDS_i = Amount of renewable fuel blended into diesel that is projected to be consumed in Alaska or a U.S. territory, in year i, if the state or territory opts-in, in gallons.

GE_i = The amount of gasoline projected to be produced by exempt small refineries and small refiners, in year i, in gallons in any year they are exempt per §§ 80.1441 and 80.1442, respectively. Assumed to equal $0.119*(G_i\text{-}RG_i)$.

DE_i = The amount of diesel fuel projected to be produced by exempt small refineries and small refiners in year i, in gallons, in any year they are exempt per §§ 80.1441 and 80.1442, respectively. Assumed to equal $0.152*(D_i\text{-}RD_i)$.

* * * * *

■ 5. Section 80.1406 is amended by revising paragraphs (c)(1) and (f) to read as follows:

§ 80.1406 Who is an obligated party under the RFS program?

* * * * *

(c) * * *

(1) Except as provided in paragraphs (c)(2), (d) and (e) of this section, an obligated party may comply with the requirements of paragraph (b) of this section in the aggregate for all of the refineries that it operates, or for each refinery individually.

* * * * *

(f) Where a refinery or import facility is jointly owned by two or more parties, the requirements of paragraph (b) of this section may be met by one of the joint owners for all of the gasoline or diesel fuel produced/imported at the facility, or each party may meet the requirements of paragraph (b) of this section for the portion of the gasoline or diesel fuel that it produces or imports, as long as all of the gasoline or diesel fuel produced/imported at the facility is accounted for in determining the Renewable Volume Obligations under § 80.1407. In either case, all joint owners are subject to the liability provisions of § 80.1461(d).

* * * * *

■ 6. Section 80.1415 is amended as follows:

■ a. By revising paragraph (a).

■ b. By revising paragraphs (b)(5) and (b)(6).

■ c. By revising paragraph (c)(1).

§ 80.1415 How are equivalence values assigned to renewable fuel?

(a)(1) Each gallon of a renewable fuel, or gallon equivalent pursuant to paragraph (b)(5) or (b)(6) of this section, shall be assigned an equivalence value by the producer or importer pursuant to paragraph (b) or (c) of this section.

(2) The equivalence value is a number that is used to determine how many gallon-RINs can be generated for a gallon of renewable fuel according to § 80.1426.

(b) * * *

(5) 77,000 Btu (lower heating value) of biogas shall represent one gallon of renewable fuel with an equivalence value of 1.0.

(6) 22.6 kW-hr of electricity shall represent one gallon of renewable fuel with an equivalence value of 1.0.

* * * * *

(c) * * *

(1) The equivalence value for renewable fuels described in paragraph (b)(7) of this section shall be calculated using the following formula:

EV = (R/0.972) * (EC/77,000)

Where:

EV = Equivalence Value for the renewable fuel, rounded to the nearest tenth.

R = Renewable content of the renewable fuel. This is a measure of the portion of a renewable fuel that came from renewable biomass, expressed as a fraction, on an energy basis.

EC = Energy content of the renewable fuel, in Btu per gallon (lower heating value).

* * * * *

■ 7. Section 80.1416 is revised to read as follows:

§ 80.1416 Petition process for evaluation of new renewable fuels pathways.

(a) Pursuant to this section, a party may petition EPA to assign a D code for their renewable fuel if any of the following apply:

(1) The renewable fuel pathway has not been evaluated by EPA to determine if it qualifies for a D code pursuant to § 80.1426(f).

(2) The renewable fuel pathway has been determined by EPA not to qualify for a D code pursuant to § 80.1426(f) and the party can document significant differences between their fuel production processes and the fuel production processes already considered by EPA.

(3) The renewable fuel pathway has been determined to qualify for a certain D code pursuant to § 80.1426(f) and the party can document significant differences between their fuel production processes and the fuel production processes already considered by EPA that may qualify their fuel pathway for a different D code.

(b)(1) Any petition under paragraph (a) of this section shall include all the following:

(i) The information specified under § 80.76.

(ii) A technical justification that includes a description of the renewable fuel, feedstock(s) used to make it, and the production process. The justification must include process modeling flow charts.

(iii) A mass balance for the pathway, including feedstocks, fuels produced, co-products, and waste materials production.

(iv) Information on co-products, including their expected use and market value.

(v) An energy balance for the pathway, including a list of any energy and process heat inputs and outputs used in the pathway, including such sources produced off site or by another entity.

(vi) Any other relevant information, including information pertaining to energy saving technologies or other process improvements.

(vii) The Administrator may ask for additional information to complete the lifecycle greenhouse gas assessment of the new fuel or pathway.

(2) For those companies who use a feedstock not previously evaluated by EPA under this subpart, the petition must include all the following in addition to the requirements in paragraph (b)(1) of this section:

(i) Type of feedstock and description of how it meets the definition of renewable biomass.

(ii) Market value of the feedstock.

(iii) List of other uses for the feedstock.

(iv) List of chemical inputs needed to produce the renewable biomass source of the feedstock and prepare the renewable biomass for processing into feedstock.

(v) Identify energy needed to obtain the feedstock and deliver it to the facility. If applicable, identify energy needed to plant and harvest the renewable biomass source of the feedstock and modify the source to create the feedstock.

(vi) Current and projected quantities of the feedstock that will be used to produce the fuel, including information on current and projected yields for feedstocks that are harvested or collected.

(vii) The Administrator may ask for additional information to complete the lifecycle Greenhouse Gas assessment of the new fuel or pathway.

(c)(1) A company may only submit one petition per pathway. If EPA determines the petition to be incomplete, then the company may resubmit.

(2) The petition must be signed and certified as meeting all the applicable requirements of this subpart by the responsible corporate officer of the applicant company.

(3) If EPA determines that the petition is incomplete then EPA will notify the applicant in writing that the petition is incomplete and will not be reviewed further. However, an amended petition that corrects the omission may be re-submitted for EPA review.

(4) If the fuel or pathway described in the petition does not meet the definitions in § 80.1401 of renewable fuel, advanced biofuel, cellulosic biofuel, or biomass-based diesel, then EPA will notify the applicant in writing that the petition is denied and will not be reviewed further.

(d) A D code must be approved prior to the generation of RINs for the fuel in question.

(e) The petition under this section shall be submitted on forms and following procedures as prescribed by EPA.

■ 8. Section 80.1425 is amended by revising the introductory text and paragraph (i) to read as follows:

§ 80.1425 Renewable Identification Numbers (RINs).

RINs generated on or after July 1, 2010 shall not be generated as a 38-digit code, but shall be identified by the information specified in paragraphs (a) through (i) of this section and introduced into EMTS as data elements during the generation of RINs pursuant to § 80.1452(b). For RINs generated prior to July 1, 2010, each RIN is a 38-digit code of the following form:

KYYYYCCCCFFFFFBBBBB
RRDSSSSSSSSSEEEEEEEE

* * * * *

(i) EEEEEEEE is a number representing the last gallon-RIN associated with a batch of renewable fuel. EEEEEEEE will be identical to SSSSSSSS if the batch-RIN represents a single gallon-RIN. The value of EEEEEEEE will be determined by the number of gallon-RINs being generated for the batch as described in § 80.1426(f).

■ 9. Section 80.1426 is amended as follows:

■ a. By revising paragraph (a)(2).

■ b. By revising paragraphs (c)(2), (c)(3), (c)(4), and (c)(6)(ii).

■ c. By revising paragraphs (d)(1) introductory text and (d)(2)(ii).

■ d. By revising paragraph (f)(1) and Table 1 to § 80.1426 and Table 2 to § 80.1426.

■ e. By revising paragraphs (f)(3)(iv) and (f)(3)(v), and Table 3 to § 80.1426.

■ f. By revising paragraph (f)(4).

■ g. By revising paragraphs (f)(5)(i) and (f)(5)(iii)(B).

■ h. By revising paragraph (f)(10).

■ i. By revising paragraphs (f)(11)(i) introductory text, (f)(11)(i)(C), (f)(11)(ii) introductory text, (f)(11)(iii) introductory text, (f)(11)(iii)(A), and (f)(11)(iv).

■ j. By revising paragraph (f)(12).

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?

(a) * * *

(2) To generate RINs for imported renewable fuel, including any renewable fuel contained in imported transportation fuel, heating oil, or jet fuel, importers must obtain information from a foreign producer that is registered pursuant to § 80.1450 sufficient to make the appropriate determination regarding the applicable D code and compliance with the renewable biomass definition for each imported batch for which RINs are generated.

* * * * *

(c) * * *

(2) *Small producer/importer threshold.* Pursuant to § 80.1455(a) and (b), renewable fuel producers that produce less than 10,000 gallons a year of renewable fuel, and importers that import less than 10,000 gallons a year of renewable fuel, are not required to generate and assign RINs to batches of renewable fuel that satisfy the requirements of paragraph (a)(1) of this section that they produce or import.

(3) *Temporary new producer threshold.* Pursuant to § 80.1455(c) and (d), new renewable fuel producers that produce less than 125,000 gallons of renewable fuel a year are not required to generate and assign RINs to batches of renewable fuel to satisfy the requirements of paragraph (a)(1) of this section.

(i) The provisions of this paragraph (c)(3) apply only to new facilities, for a maximum of three years beginning with the calendar year in which the production facility produces its first gallon of renewable fuel.

(ii) [RESERVED]

(4) Importers shall not generate RINs for renewable fuel imported from a foreign renewable fuel producer, or for renewable fuel made with ethanol produced by a foreign ethanol producer, unless the foreign renewable fuel producer or foreign ethanol producer is registered with EPA as required in § 80.1450.

* * * * *

(6) * * *

(ii) The fuel has been produced from a chemical conversion process that uses another renewable fuel as a feedstock, the renewable fuel used as a feedstock was produced by another party, and RINs were received with the renewable fuel.

(A) Parties who produce renewable fuel made from a feedstock which itself was a renewable fuel received with RINs, shall assign the original RINs to the new renewable fuel.

(B) [Reserved]

(d)(1) *Definition of batch.* For the purposes of this section and § 80.1425, a "batch of renewable fuel" is a volume of renewable fuel that has been assigned a unique BBBBB code in the RIN, or its equivalent in EMTS, within a calendar year by the producer or importer of the renewable fuel in accordance with the provisions of this section and § 80.1425.

* * * * *

(2) * * *

(ii) The value of EEEEEEEE in the batch-RIN shall represent the last gallon-RIN associated with the volume of renewable fuel, based on the RIN volume V_{RIN} determined pursuant to paragraph (f) of this section.

* * * * *

(f) * * *

(1) *Applicable pathways.* D codes shall be used in RINs generated by producers or importers of renewable fuel according to the pathways listed in Table 1 to this section, or as approved by the Administrator. In choosing an appropriate D code, producers and importers may disregard any incidental, de minimis feedstock contaminants that are impractical to remove and are related to customary feedstock production and transport.

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS

Fuel type	Feedstock	Production process requirements	D–code
Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and at least two advanced technologies from Table 2 to this section.	6
Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and at least one of the advanced technologies from Table 2 to this section plus drying no more than 65% of the distillers grains with solubles it markets annually.	6
Ethanol	Corn starch	All of the following: Dry mill process, using natural gas, biomass, or biogas for process energy and drying no more than 50% of the distillers grains with solubles it markets annually.	6
Ethanol	Corn starch	Wet mill process using biomass or biogas for process energy.	6
Ethanol	Starches from crop residue and annual covercrops.	Fermentation using natural gas, biomass, or biogas for process energy.	6
Biodiesel, and renewable diesel	Soy bean oil; Oil from annual covercrops; Algal oil; Biogenic waste oils/fats/greases; Non-food grade corn oil.	One of the following: Trans-Esterification Hydrotreating Excluding processes that co-process renewable biomass and petroleum.	4
Biodiesel, and renewable diesel	Soy bean oil; Oil from annual covercrops; Algal oil; Biogenic waste oils/fats/greases; Non-food grade corn oil.	One of the following: Trans-Esterification. Hydrotreating Includes only processes that co-process renewable biomass and petroleum.	5
Ethanol	Sugarcane	Fermentation	5
Ethanol	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, and miscanthus; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Any	3
Cellulosic Diesel, Jet Fuel and Heating Oil.	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, and miscanthus; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Any	7
Butanol	Corn starch	Fermentation; dry mill using natural gas, biomass, or biogas for process energy.	6

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS—Continued

Fuel type	Feedstock	Production process requirements	D–code
Cellulosic Naphtha	Cellulosic Biomass from crop residue, slash, pre-commercial thinnings and tree residue, annual covercrops, switchgrass, and miscanthus; cellulosic components of separated yard waste; cellulosic components of separated food waste; and cellulosic components of separated MSW.	Fischer-Tropsch process	3
Ethanol, renewable diesel, jet fuel, heating oil, and naphtha.	The non-cellulosic portions of separated food waste.	Any	5
Biogas	Landfills, sewage waste treatment plants, manure digesters.	Any	5

TABLE 2 TO § 80.1426—ADVANCED TECHNOLOGIES

Corn oil fractionation that is applied to all corn used to produce ethanol in the facility.

Corn oil extraction that is applied to all the thin stillage and distillers grains and solubles produced by the ethanol production facility.

Membrane separation in which all ethanol dehydration in the ethanol production facility is done using a hydrophilic membrane.

Raw starch hydrolysis that is used for all starch hydrolysis in the ethanol production facility instead of hydrolysis using a traditional high heat (>120 °C) cooking process.

Combined heat and power such that all the thermal energy used at the facility (including thermal energy produced at the facility and that which is derived from an off-site waste heat supplier), exclusive of any thermal energy used for the drying of distillers grains and solubles, is used to produce electricity prior to being used to meet the process heat requirements of the facility.

* * * * *

(3) * * *

(iv) If the pathway applicable to a producer changes on a specific date, such that one pathway applies before the date and another pathway applies on and after the date, and each batch is of a single fuel type, then the applicable D code and unique BBBBB code, or its equivalent in EMTS, used in generating RINs must change on the date that the change in pathway occurs and the number of gallon-RINs that shall be generated for a batch of renewable fuel shall be equal to a volume calculated according to the following formula:

$$V_{RIN} = EV * V_s$$

Where:

V_{RIN} = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for a batch with a single applicable D code.

EV = Equivalence value for the batch of renewable fuel per § 80.1415.

V_s = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

(v) If a producer produces batches that are comprised of a mixture of fuel types with different equivalence values and different applicable D codes, then separate values for V_{RIN} shall be calculated for each category of renewable fuel according to formulas in Table 3 to this section. All batch-RINs thus generated shall be assigned unique BBBBB codes in the RIN, or their equivalents in EMTS, for each portion of the batch with a different D code.

TABLE 3 TO § 80.1426—NUMBER OF GALLON-RINS TO ASSIGN TO BATCH-RINS WITH D CODES DEPENDENT ON FUEL TYPE

D code to use in batch-RIN	Number of gallon-RINs
D = 3	$V_{RIN,\ CB} = EV_{CB} * V_{s,\ CB}$
D = 4	$V_{RIN,\ BBD} = EV_{BBD} * V_{s,\ BBD}$
D = 5	$V_{RIN,\ AB} = EV_{AB} * V_{s,\ AB}$
D = 6	$V_{RIN,\ RF} = EV_{RF} * V_{s,\ RF}$
D = 7	$V_{RIN,\ CD} = EV_{CD} * V_{s,\ CD}$

Where:

$V_{RIN,CB}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the cellulosic biofuel portion of the batch with a D code of 3.

$V_{RIN,BBD}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the biomass-based diesel portion of the batch with a D code of 4.

$V_{RIN,AB}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the advanced biofuel portion of the batch with a D code of 5.

$V_{RIN,RF}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the renewable fuel portion of the batch with a D code of 6.

$V_{RIN,CD}$ = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the cellulosic diesel portion of the batch with a D code of 7.

EV_{CB} = Equivalence value for the cellulosic biofuel portion of the batch per § 80.1415.

EV_{BBD} = Equivalence value for the biomass-based diesel portion of the batch per § 80.1415.

EV_{AB} = Equivalence value for the advanced biofuel portion of the batch per § 80.1415.

EV_{RF} = Equivalence value for the renewable fuel portion of the batch per § 80.1415.

EV_{CD} = Equivalence value for the cellulosic diesel portion of the batch per § 80.1415.

$V_{s,CB}$ = Standardized volume at 60 °F of the portion of the batch that must be assigned a D code of 3, in gallons, calculated in accordance with paragraph (f)(8) of this section.

$V_{s,BBD}$ = Standardized volume at 60 °F of the portion of the batch that must be assigned a D code of 4, in gallons, calculated in accordance with paragraph (f)(8) of this section.

$V_{s,AB}$ = Standardized volume at 60 °F of the portion of the batch that must be assigned a D code of 5, in gallons, calculated in accordance with paragraph (f)(8) of this section.

$V_{s,RF}$ = Standardized volume at 60 °F of the portion of the batch that must be assigned a D code of 6, in gallons, calculated in accordance with paragraph (f)(8) of this section.

$V_{s,CD}$ = Standardized volume at 60 °F of the portion of the batch that must be assigned a D code of 7, in gallons, calculated in accordance with paragraph (f)(8) of this section.

* * * * *

(4) *Renewable fuel that is produced by co-processing renewable biomass and non-renewable feedstocks simultaneously to produce a fuel that is partially renewable.*

(i) The number of gallon-RINs that shall be generated for a batch of partially renewable fuel shall be equal

to a volume V_{RIN} calculated according to Method A or Method B.

(A) *Method A.*

(*1*) V_{RIN} shall be calculated according to the following formula:

$$V_{RIN} = EV * V_s * FE_R/(FE_R + FE_{NR})$$

Where:

V_{RIN} = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the batch.

EV = Equivalence value for the batch of renewable fuel per § 80.1415.

V_s = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

FE_R = Feedstock energy from renewable biomass used to make the transportation fuel, heating oil, or jet fuel, in Btu.

FE_{NR} = Feedstock energy from non-renewable feedstocks used to make the transportation fuel, heating oil, or jet fuel, in Btu.

(*2*) The value of FE for use in paragraph (f)(4)(i)(A)(*1*) of this section shall be calculated from the following formula:

$$FE = M * (1 - m) * CF * E$$

Where:

FE = Feedstock energy, in Btu.

M = Mass of feedstock, in pounds, measured on a daily or per-batch basis.

m = Average moisture content of the feedstock, in mass percent.

CF = Converted Fraction in annual average mass percent, representing that portion of the feedstock that is converted into transportation fuel, heating oil, or jet fuel by the producer.

E = Energy content of the components of the feedstock that are converted to fuel, in annual average Btu/lb, determined according to paragraph (f)(7) of this section.

(B) *Method B.* V_{RIN} shall be calculated according to the following formula:

$$V_{RIN} = EV * V_s * R$$

Where:

V_{RIN} = RIN volume, in gallons, for use in determining the number of gallon-RINs that shall be generated for the batch.

EV = Equivalence value for the batch of renewable fuel per § 80.1415.

V_s = Standardized volume of the batch of renewable fuel at 60 °F, in gallons, calculated in accordance with paragraph (f)(8) of this section.

R = The renewable fraction of the fuel as measured by a carbon-14 dating test method as provided in paragraph (f)(9) of this section.

(ii) The D code that shall be used in the RINs generated to represent partially renewable transportation fuel, heating oil, or jet fuel shall be the D code specified in Table 1 to this section, or a D code as approved by the Administrator, which corresponds to the pathway that describes a producer's operations. In determining the appropriate pathway, the contribution of non-renewable feedstocks to the production of partially renewable fuel shall be ignored.

(5) * * *

(i) *Separated yard waste and food waste* means, for the purposes of this section, waste that is one of the following:

(A) *Separated yard waste*, which is a feedstock stream consisting of yard waste kept separate since generation from other waste materials. Separated yard waste is deemed to be composed entirely of cellulosic materials.

(B) *Separated food waste*, which is a feedstock stream consisting of food waste kept separate since generation from other waste materials, and which includes food and beverage production waste and post-consumer food and beverage waste. Separated food waste is deemed to be composed entirely of non-cellulosic materials, unless a party demonstrates that a portion of the feedstock is cellulosic through approval of their facility registration.

(C) *Separated municipal solid waste (separated MSW)*, which is material remaining after separation actions have been taken to remove recyclable paper, cardboard, plastics, rubber, textiles, metals, and glass from municipal solid waste, and which is composed of both cellulosic and non-cellulosic materials.

* * * * *

(iii) * * *

(B) The fuel producer has evidence of all contracts relating to the disposition of paper, cardboard, plastics, rubber, textiles, metals, and glass that are recycled.

* * * * *

(10)(i) For purposes of this section, renewable electricity or biogas that is not introduced into a distribution system with fuels derived from non-renewable feedstocks is considered renewable fuel and the producer may generate RINs if all of the following apply:

(A) The fuel is produced from renewable biomass and qualifies for a D code in Table 1 to this section or has received approval for use of a D code by the Administrator;

(B) The fuel producer has entered into a written contract for the sale and use of a specific quantity of renewable electricity or biogas as transportation fuel; and

(C) The renewable electricity or biogas is used as a transportation fuel.

(ii) A producer of renewable electricity that is generated by co-firing a combination of renewable biomass and fossil fuel may generate RINs only for the portion attributable to the renewable biomass, using the procedure described in paragraph (f)(4) of this section.

(11)(i) For purposes of this section, renewable electricity or biogas that is introduced into a commercial distribution system may be considered renewable fuel and the producer may generate RINs if:

* * * * *

(C) The quantity of biogas or renewable electricity for which RINs were generated was sold for use as transportation fuel and for no other purposes.

(ii) For biogas that is introduced into a commercial distribution system, the producer may generate RINs only for the volume of biogas that has been gathered, processed, and injected into a common carrier pipeline if:

* * * * *

(iii) The fuel used for transportation purposes is considered produced from renewable biomass only to the extent that:

(A) The amount of fuel sold for use as transportation fuel matches the amount of fuel derived from renewable biomass that the producer contracted to have placed into the commercial distribution system; and

* * * * *

(iv) For renewable electricity that is generated by co-firing a combination of renewable biomass and fossil fuel, the producer may generate RINs only for the portion attributable to the renewable biomass, using the procedure described in paragraph (f)(4) of this section.

(12) For purposes of Table 1 to this section, process heat produced from combustion of gas at a renewable fuel facility is considered derived from biomass if the gas is biogas.

(i) For biogas directly transported to the facility without being placed in a commercial distribution system, all of the following conditions must be met:

(A) The producer has entered into a written contract for the procurement of a specific volume of biogas with a specific heat content.

(B) The volume of biogas was sold to the renewable fuel production facility, and to no other facility.

(C) The volume and heat content of biogas injected into the pipeline and the volume of gas used as process heat are measured by continuous metering.

(D) The common carrier pipeline into which the biogas is placed ultimately serves the producer's renewable fuel facility.

(ii) For biogas that has been gathered, processed and injected into a common carrier pipeline, all of the following conditions must be met:

(A) The producer has entered into a written contract for the procurement of a specific volume of biogas with a specific heat content.

(B) The volume of biogas was sold to the renewable fuel production facility, and to no other facility.

(C) The volume of biogas placed into a common carrier pipeline is ultimately withdrawn from that pipeline is withdrawn in a manner and at a time consistent with the transport of fuel between the injection and withdrawal points.

(D) The volume and heat content of biogas injected into the pipeline and the volume of gas used as process heat are measured by continuous metering.

(E) The common carrier pipeline into which the biogas is placed ultimately serves the producer's renewable fuel facility.

(iii) The process heat produced from combustion of gas at a renewable fuel facility described in paragraph (f)(12)(i) of this section shall not be considered derived from biomass if any other party relied upon the contracted volume of biogas for the creation of RINs.

■ 10. Section 80.1427 is amended by revising paragraphs (a)(4)(i) and (a)(7)(i) to read as follows:

§ 80.1427 How are RINs used to demonstrate compliance?

(a) * * *

(4) * * *

(i) A RIN generated pursuant to § 80.1126 with a D code of 2 and an RR code of 15, 16, or 17 is deemed equivalent to a RIN generated pursuant to § 80.1426 having a D code of 4.

* * * * *

(7) * * *

(i) Prior to determining compliance with the 2010 biomass-based diesel RVO, obligated parties may reduce the value of $RVO_{BBD,2010}$ by an amount equal to the sum of all 2008 and 2009 RINs that they used for compliance purposes for calendar year 2009 which have a D code of 2 and an RR code of 15, 16, or 17.

* * * * *

■ 11. Section 80.1428 is amended by revising paragraph (c) to read as follows:

§ 80.1428 General requirements for RIN distribution.

* * * * *

(c) *RIN expiration.* Except as provided in § 80.1427(a)(7), a RIN is valid for compliance during the calendar year in which it was generated, or the following calendar year. Any RIN that is not used for compliance purposes for the calendar year in which it was generated, or for the following calendar year, will be considered an expired RIN. Pursuant to § 80.1431(a), an expired RIN will be considered an invalid RIN and cannot be used for compliance purposes.

* * * * *

■ 12. Section 80.1429 is amended by revising paragraphs (d) and (g) to read as follows:

§ 80.1429 Requirements for separating RINs from volumes of renewable fuel.

* * * * *

(d) Upon and after separation of a RIN from its associated volume of renewable fuel, the separated RIN must be accompanied by a PTD pursuant to § 80.1453 when transferred to another party.

* * * * *

(g) Any 2009 or 2010 RINs retired pursuant to § 80.1129 because renewable fuel was used in a nonroad vehicle or nonroad engine (except for ocean-going vessels), or as heating oil or jet fuel may be reinstated by the retiring party for sale or use to demonstrate compliance with a 2010 RVO.

■ 13. Section 80.1430 is amended by revising paragraphs (a), (b)(2), and (b)(3) to read as follows:

§ 80.1430 Requirements for exporters of renewable fuels.

(a) Any party that owns any amount of renewable fuel, whether in its neat form or blended with gasoline or diesel, that is exported from any of the regions described in § 80.1426(b) shall acquire sufficient RINs to comply with all applicable Renewable Volume Obligations under paragraphs (b) through (e) of this section representing the exported renewable fuel.

(b) * * *

(2) *Biomass-based diesel.*

$$RVO_{BBD,i} = \Sigma(VOL_k * EV_k)_i + D_{BBD,i-1}$$

Where:

$RVO_{BBD,i}$ = The Renewable Volume Obligation for biomass-based diesel for the exporter for calendar year i, in gallons.

k = A discrete volume of exported renewable fuel.

VOL_k = The standardized volume of discrete volume k of exported renewable fuel that is biodiesel or renewable diesel, in gallons, calculated in accordance with § 80.1426(f)(8).

EV_k = The equivalence value associated with discrete volume k.

Σ = Sum involving all volumes of biodiesel or renewable diesel exported.

$D_{BBD,i-1}$ = Deficit carryover from the previous year for biomass-based diesel, in gallons.

(3) *Advanced biofuel.*

$$RVO_{AB,i} = \Sigma(VOL_k * EV_k)_i + D_{AB,i-1}$$

Where:

$RVO_{AB,i}$ = The Renewable Volume Obligation for advanced biofuel for the exporter for calendar year i, in gallons.

k = A discrete volume of exported renewable fuel.

VOL_k = The standardized volume of discrete volume k of exported renewable fuel that is biodiesel or renewable diesel, or that the exporter knows or has reason to know is cellulosic biofuel or advanced biofuel, in gallons, calculated in accordance with § 80.1426(f)(8).

EV_k = The equivalence value associated with discrete volume k.

Σ = Sum involving all volumes of advanced biofuel exported.

$D_{AB,i-1}$ = Deficit carryover from the previous year for advanced biofuel, in gallons.

* * * * *

■ 14. Section 80.1440 is amended by revising paragraphs (c)(3), (d), and (e) to read as follows:

§ 80.1440 What are the provisions for blenders who handle and blend less than 125,000 gallons of renewable fuel per year?

* * * * *

(c) * * *

(3) A renewable fuel blender who delegates its RIN-related responsibilities under this section will remain liable for any violation of this subpart M associated with its renewable fuel blending activities.

(d) Renewable fuel blenders who handle and blend less than 125,000 gallons of renewable fuel per year and delegate their RIN-related responsibilities under paragraph (b) of this section must register pursuant to § 80.1450(e), and may not own RINs.

(e) Renewable fuel blenders who handle and blend less than 125,000 gallons of renewable fuel per year and who do not opt to delegate their RIN-related responsibilities, or own RINs, will be subject to all requirements stated in paragraph (b) of this section, and all other applicable requirements of this subpart M.

■ 15. Section 80.1442 is amended as follows:

■ a. By revising paragraph (b)(1).

■ b. By removing and reserving paragraph (b)(4).

■ c. By revising paragraph (c).

■ d. By revising paragraph (d)(1).

§ 80.1442 What are the provisions for small refiners under the RFS program?

* * * * *

(b)(1) The small refiner exemption in paragraph (c) of this section is effective immediately, except as provided in paragraph (b)(5) of this section, provided that all requirements of this section are satisfied.

* * * * *

(4) [Reserved]

* * * * *

(c) *Small refiner temporary exemption.*

(1) Transportation fuel produced by an small refiner pursuant to paragraph (b)(1) of this section, or an approved foreign small refiner (as defined at § 80.1465(a)), is exempt from January 1, 2010 through December 31, 2010 from the renewable fuel standards of § 80.1405 and the requirements that apply to obligated parties under this subpart if the refiner or foreign refiner meets all the criteria of paragraph (a)(1) of this section.

(2) The small refiner exemption shall apply to a small refiner pursuant to paragraph (b)(1) of this section or an approved foreign small refiner unless that refiner chooses to waive this exemption (as described in paragraph (d) of this section).

(d)(1) A refiner may, at any time, waive the small refiner exemption under paragraph (c) of this section upon notification to EPA.

* * * * *

■ 16. Section 80.1450 is amended by revising paragraphs (b), (c), (d)(2), (e), and (f) to read as follows:

§ 80.1450 What are the registration requirements under the RFS program?

* * * * *

(b) *Producers.* Any RIN-generating foreign or domestic producer of renewable fuel, any foreign renewable fuel producer that sells renewable fuel for RIN generation by a United States importer, or any foreign ethanol producer that produces ethanol used in renewable fuel for which RINs are generated by a United States importer, must provide EPA the information specified under § 80.76 if such information has not already been provided under the provisions of this part, and must receive EPA-issued company and facility identification numbers prior to the generation of any RINs for their fuel or for fuel made with their ethanol. Unless otherwise specifically indicated, all the following registration information must be submitted and accepted by EPA by July 1, 2010, or 60 days prior to the generation of RINs, whichever date comes later, subject to this subpart:

(1) A description of the types of renewable fuels or ethanol that the producer intends to produce at the facility and that the facility is capable of producing without significant modifications to the existing facility. For each type of renewable fuel or ethanol, the renewable fuel producer or foreign ethanol producer shall also provide all the following:

(i) A list of all the feedstocks the facility is capable of utilizing without significant modification to the existing facility.

(ii) A description of the facility's renewable fuel or ethanol production processes.

(iii) The type of co-products produced with each type of renewable fuel or ethanol.

(iv) A process heat fuel supply plan that includes all of the following:

(A) For all process heat fuel, provide all the following information:

(*1*) Each type of process heat fuel used at the facility.

(*2*) Name and address of the company supplying each process heat fuel to the renewable fuel or foreign ethanol facility.

(B) For biogas used for process heat, provide all the following information:

(*1*) Locations from which the biogas was produced or extracted.

(*2*) Name of suppliers of all biogas the producer purchases for use for process heat in the facility.

(*3*) An affidavit from the biogas supplier stating its intent to supply biogas to the renewable fuel producer or foreign ethanol producer, and the quantity and energy content of the biogas that it intends to provide to the renewable fuel producer or foreign ethanol producer.

(v) The following records that support the facility's baseline volume as defined in § 80.1401 or, for foreign ethanol facilities, their production volume:

(A) For all facilities except those described in paragraph (b)(1)(v)(B) of this section, copies of the most recent applicable air permits issued by the U.S. Environmental Protection Agency, state, local air pollution control agencies, or foreign governmental agencies and that govern the construction and/or operation of the renewable fuel or foreign ethanol facility.

(B) For facilities claiming the exemption described in § 80.1403(c) or (d), applicable air permits issued by the U.S. Environmental Protection Agency, state, local air pollution control agencies, or foreign governmental agencies that govern the construction and/or operation of the renewable fuel facility that were:

(*1*) Issued or revised no later than December 19, 2007, for facilities described in § 80.1403(c); or

(*2*) Issued or revised no later than December 31, 2009, for facilities described in § 80.1403(d).

(C) For all facilities, copies of documents demonstrating each facility's actual peak capacity as defined in § 80.1401 if the maximum rated annual volume output of renewable fuel is not specified in the air permits specified in paragraphs (b)(1)(v)(A) and (b)(1)(v)(B) of this section, as appropriate.

(D) Such other records as may be requested by the Administrator.

(vi) For facilities claiming the exemption described in § 80.1403(c) or (d), evidence demonstrating the date that construction commenced (as defined in § 80.1403(a)(1)) including all of the following:

(A) Contracts with construction and other companies.

(B) Applicable air permits issued by the U.S. Environmental Protection Agency, state, local air pollution control agencies, or foreign governmental agencies that governed the construction and/or operation of the renewable fuel facility during construction and when first operated.

(vii)(A) For a producer of renewable fuel or a foreign producer of ethanol made from separated yard waste per § 80.1426(f)(5)(i)(A):

(*1*) The location of any municipal waste facility or other facility from which the waste stream consisting solely of separated yard waste is collected; and

(*2*) A plan documenting how the waste will be collected and how the renewable fuel producer or foreign ethanol producer will conduct ongoing verification that such waste consists only of yard waste (and incidental other components such as paper and plastics) that is kept separate since generation from other waste materials.

(B) For a producer of renewable fuel or a foreign producer of ethanol made from separated food waste per § 80.1426(f)(5)(i)(B):

(*1*) The location of any municipal waste facility or other facility from which the waste stream consisting solely of separated food waste is collected; and

(*2*) A plan documenting how the waste will be collected, how the cellulosic and non-cellulosic portions of the waste will be quantified, and for ongoing verification that such waste consists only of food waste (and incidental other components such as paper and plastics) that is kept separate since generation from other waste materials.

(viii) For a producer of renewable fuel, or a foreign producer of ethanol, made from separated municipal solid waste per § 80.1426(f)(5)(i)(C):

(A) The location of the municipal waste facility from which the separated municipal solid waste is collected or from which material is collected that will be processed to produce separated municipal solid waste.

(B) A plan providing ongoing verification that there is separation of recyclable paper, cardboard, plastics, rubber, textiles, metals, and glass wastes

to the extent reasonably practicable and which documents the following:

(*1*) Extent and nature of recycling that occurred prior to receipt of the waste material by the renewable fuel producer or foreign ethanol producer;

(*2*) Identification of available recycling technology and practices that are appropriate for removing recycling materials from the waste stream by the fuel producer or foreign ethanol producer; and

(*3*) Identification of the technology or practices selected for implementation by the fuel producer or foreign ethanol producer including an explanation for such selection, and reasons why other technologies or practices were not.

(C) Contracts relevant to materials recycled from municipal waste streams as described in § 80.1426(f)(5)(iii).

(D) Certification by the producer that recycling is conducted in a manner consistent with goals and requirements of applicable State and local laws relating to recycling and waste management.

(2) An independent third-party engineering review and written report and verification of the information provided pursuant to paragraph (b)(1) of this section. The report and verification shall be based upon a site visit and review of relevant documents and shall separately identify each item required by paragraph (b)(1) of this section, describe how the independent third-party evaluated the accuracy of the information provided, state whether the independent third-party agrees with the information provided, and identify any exceptions between the independent third-party's findings and the information provided.

(i) The verifications required under this section must be conducted by a professional engineer, as specified in paragraphs (b)(2)(i)(A) and (b)(2)(i)(B) of this section, who is an independent third-party. The verifying engineer must be:

(A) For a domestic renewable fuel production facility or a foreign ethanol production facility, a professional engineer who is licensed by an appropriate state agency in the United States, with professional work experience in the chemical engineering field or related to renewable fuel production.

(B) For a foreign renewable fuel production facility, an engineer who is a foreign equivalent to a professional engineer licensed in the United States with professional work experience in the chemical engineering field or related to renewable fuel production.

(ii) To be considered an independent third-party under this paragraph (b)(2):

(A) The third-party shall not be operated by the renewable fuel producer or foreign ethanol producer, or any subsidiary or employee of the renewable fuel producer or foreign ethanol producer.

(B) The third-party shall be free from any interest in the renewable fuel producer or foreign ethanol producer's business.

(C) The renewable fuel producer or foreign ethanol producer shall be free from any interest in the third-party's business.

(D) Use of a third-party that is debarred, suspended, or proposed for debarment pursuant to the Government-wide Debarment and Suspension regulations, 40 CFR part 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR, part 9, subpart 9.4, shall be deemed noncompliance with the requirements of this section.

(iii) The independent third-party shall retain all records pertaining to the verification required under this section for a period of five years from the date of creation and shall deliver such records to the Administrator upon request.

(iv) The renewable fuel producer or foreign ethanol producer must retain records of the review and verification, as required in § 80.1454(b)(6).

(v) The third-party must provide to EPA documentation of his or her qualifications as part of the engineering review, including proof of appropriate professional license or foreign equivalent.

(vi) Owners and operators of facilities described in § 80.1403(c) and (d) must submit the engineering review no later than December 31, 2010.

(c) *Importers.* Importers of renewable fuel must provide EPA the information specified under § 80.76, if such information has not already been provided under the provisions of this part and must receive an EPA-issued company identification number prior to generating or owning RINs. Registration information must be submitted and accepted by EPA by July 1, 2010, or 60 days prior to an importer importing any renewable fuel with assigned RINs or generating any RINs for renewable fuel, whichever dates comes later.

(d) * * *

(2) Any producer of renewable fuel who makes any other changes to a facility that will affect the producer's registration information but will not affect the renewable fuel category for which the producer is registered per paragraph (b) of this section must update his registration information 7 days prior to the change.

(e) Any party who owns RINs, intends to own RINs, or intends to allow another party to separate RINs as per § 80.1440, but who is not covered by paragraph (a), (b), or (c) of this section, must provide EPA the information specified under § 80.76, if such information has not already been provided under the provisions of this part and must receive an EPA-issued company identification number prior to owning any RINs. Registration information must be submitted at least 30 days prior to RIN ownership.

(f) Registration for any facility claiming an exemption under § 80.1403(c) or (d), must be submitted by July 1, 2013. EPA may in its sole discretion waive this requirement if it determines that the information submitted in any later registration can be verified by EPA in the same manner as would have been possible with a timely submission.

* * * * *

■ 17. Section 80.1451 is amended as follows:

■ a. By revising paragraph (a)(1)(xi).

■ b. By revising paragraphs (b)(1)(ii)(H), (b)(1)(ii)(K), (b)(1)(ii)(N), (b)(1)(ii)(P), (b)(1)(ii)(Q), and (b)(1)(ii)(R).

■ c. By revising paragraphs (c)(1)(iii)(D) and (c)(2)(xv).

■ d. By revising paragraphs (d) introductory text and (d)(1).

■ e. By revising paragraph (e).

§ 80.1451 What are the reporting requirements under the RFS program?

(a) * * *

(1) * * *

(xi) A list of all RINs retired for compliance in the reporting period.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(H) The fuel type of each batch.

* * * * *

(K) The types and quantities of feedstocks used.

* * * * *

(M) The type of co-products produced with each batch.

(N) The quantity of co-products produced in each quarter.

* * * * *

(P) Producers of renewable electricity and producers or importers of biogas used for transportation as described in § 80.1426(f)(10) and (11), shall report all of the following:

(*1*) The total energy produced and supplied for use as a transportation fuel, in units of energy (for example, MMBtu or MW) based on metering of gas volume or electricity.

(*2*) The name and location of where the fuel is sold for use as a transportation fuel.

(Q) Producers or importers of renewable fuel produced at facilities that use biogas for process heat as described in § 80.1426(f)(12), shall report the total energy supplied to the renewable fuel facility, in MMBtu based on metering of gas volume.

(R) Producers or importers of renewable fuel made from separated municipal solid waste as described in § 80.1426(f)(5)(i)(C), shall report the amount of paper, cardboard, plastics, rubber, textiles, metals, and glass separated from municipal solid waste for recycling. Reporting shall be in units of weight (in tons).

* * * * *

(c) * * *

(1) * * *

(iii) * * *

(D) Transaction type (i.e., RIN buy, RIN sell, RIN separation, RIN retire, reinstated 2009 or 2010 RINs).

* * * * *

(2) * * *

(xv) The total 2009 and 2010 retired RINs reinstated.

* * * * *

(d) Except for those producers using feedstocks subject to the aggregate compliance approach described in § 80.1454(g), producers and RIN-generating importers of renewable fuel made from feedstocks that are planted crops and crop residue from existing foreign agricultural land, planted trees or tree residue from actively managed tree plantations, slash and pre-commercial thinnings from forestlands or biomass obtained from areas at risk of wildfire must submit quarterly reports according to the schedule in paragraph (f)(2) of this section that include all of the following:

(1) A summary of the types and quantities of feedstocks used in that quarter.

* * * * *

(e) If EPA finds that the 2007 baseline amount of agricultural land has been exceeded in any year beginning in 2010, beginning on the first day of July of the following calendar year any producers or importers of renewable fuel as defined in § 80.1401 who use planted crops and/or crop residue from existing U.S. agricultural lands as feedstock must submit quarterly reports according to the schedule in paragraph (f)(2) of this section that include all of the following:

(1) A summary of the types and quantities of feedstocks used in that quarter.

(2) Electronic data identifying the land by coordinates of the points defining the boundaries from which each type of feedstock listed per paragraph (d)(1) of this section was harvested.

(3) If electronic data identifying a plot of land have been submitted previously, producers and RIN-generating importers may submit a cross-reference to that electronic data.

* * * * *

■ 18. Section 80.1452 is amended as follows:

■ a. By revising paragraphs (b) introductory text, (b)(2), (b)(4), (b)(6), (b)(9), (b)(13), and (b)(15).

■ b. By revising paragraphs (c) introductory text, (c)(4), (c)(5), and (c)(7).

§ 80.1452 What are the requirements related to the EPA Moderated Transaction System (EMTS)?

* * * * *

(b) Starting July 1, 2010, each time a domestic or foreign producer or importer of renewable fuel assigns RINs to a batch of renewable fuel pursuant to § 80.1426(e), all the following information must be submitted to EPA via the submitting party's EMTS account within five (5) business days of the date of RIN assignment.

* * * * *

(2) The EPA company registration number of the producer of renewable fuel.

* * * * *

(4) The EPA facility registration number of the producer of the renewable fuel.

* * * * *

(6) The D code of RINs generated for the batch.

* * * * *

(9) The fuel type of the batch.

* * * * *

(13) The type and quantity of feedstock(s) used for the batch.

* * * * *

(15) The type and quantity of co-products produced with the batch of renewable fuel.

* * * * *

(c) Starting July 1, 2010, each time any party engages in a transaction involving RINs generated on or after July 1, 2010, all the following information must be submitted to EPA via the submitting party's EMTS account within five (5) business days of the reportable event. The reportable event for a RIN purchase or sale occurs on the date of transfer per § 80.1453(a)(4). The reportable event for a RIN separation or retirement occurs on the date of separation or retirement as described in § 80.1429.

* * * * *

(4) The RIN status (Assigned or Separated).

(5) The D code of the RINs.

* * * * *

(7) The date of transfer per § 80.1453(a)(4), if applicable.

* * * * *

■ 19. Section 80.1453 is amended as follows:

■ a. By removing and reserving paragraph (a)(5).

■ b. By revising paragraphs (a)(7), (a)(8), (a)(10), and (a)(11).

§ 80.1453 What are the product transfer document (PTD) requirements for the RFS program?

(a) * * *

(5) [Reserved]

* * * * *

(7) The D code of the RINs.

(8) The RIN status (Assigned or Separated).

* * * * *

(10) The associated reason for the sell or buy transaction (e.g., standard trade or remedial action).

(11) Additional RIN-related information, as follows:

(i) If assigned RINs are being transferred on the same PTD used to transfer ownership of the renewable fuel, then the assigned RIN information shall be identified on the PTD.

(A) The identifying information for a RIN that is transferred in EMTS generically is the information specified in paragraphs (a)(1) through (a)(10) of this section.

(B) The identifying information for a RIN that is transferred in EMTS uniquely is the information specified in paragraphs (a)(1) through (a)(10) of this section, the RIN generator company ID, the RIN generator facility ID, and the batch number.

(C) The identifying information for a RIN that is generated prior to July 1, 2010, is the 38-digit code pursuant to § 80.1425, in its entirety.

(ii) If assigned RINs are being transferred on a separate PTD from that which is used to transfer ownership of the renewable fuel, then the PTD which is used to transfer ownership of the renewable fuel shall include all the following:

(A) The number of gallon-RINs being transferred.

(B) A unique reference to the PTD which is transferring the assigned RINs.

(C) The information specified in paragraphs (a)(11)(i)(A) through (a)(11)(i)(C) of this section, as appropriate.

(iii) If no assigned RINs are being transferred with the renewable fuel, the PTD which is used to transfer

ownership of the renewable fuel shall state "No assigned RINs transferred.".

(iv) If RINs have been separated from the renewable fuel or fuel blend pursuant to § 80.1429(b)(4), then all PTDs which are at any time used to transfer ownership of the renewable fuel or fuel blend shall state "This volume of fuel must be used in the designated form, without further blending.".

* * * * *

■ 20. Section 80.1454 is amended as follows:

■ a. By revising paragraphs (a)(2) and (a)(3)(iv), and adding a new paragraph (a)(6).

■ b. By revising paragraphs (c)(1)(i) introductory text, (c)(1)(i)(A), (c)(1)(ii)(A), and (c)(2)(ii).

■ c. By revising paragraph (d) introductory text.

■ d. By redesignating paragraph (d)(3) as paragraph (d)(4), adding a new paragraph (d)(3), and revising newly designated paragraph (d)(4).

■ e. By revising paragraph (g).

■ f. By revising paragraphs (h) introductory text and (h)(6)(v).

■ g. By revising paragraph (j) introductory text.

■ h. By redesignating paragraph (j)(2)(iii) as paragraph (j)(2)(iv), and adding a new paragraph (j)(2)(iii).

■ i. By revising paragraphs (k)(1) through (k)(5).

§ 80.1454 What are the recordkeeping requirements under the RFS program?

(a) * * *

(2) Copies of all reports submitted to EPA under § 80.1451(a), as applicable.

(3) * * *

(iv) Additional information, including contracts, correspondence, and invoices, related to details of the RIN transaction and its terms.

* * * * *

(6) For exported renewable fuel, invoices, bills of lading and other documents describing the exported renewable fuel.

* * * * *

(c) * * *

(1) * * *

(i) RIN-generating foreign producers and importers of renewable fuel made from feedstocks that are planted crops or crop residue from existing foreign agricultural land, planted trees or tree residue from actively managed tree plantations, slash and pre-commercial thinnings from forestlands or biomass obtained from wildland-urban interface must maintain all the following records to verify the location where these feedstocks were produced:

(A) Maps or electronic data identifying the boundaries of the land where each type of feedstock was produced.

* * * * *

(ii)(A) RIN-generating foreign producers and importers of renewable fuel made from planted crops or crop residue from existing foreign agricultural land must keep records that serve as evidence that the land from which the feedstock was obtained was cleared or cultivated prior to December 19, 2007 and actively managed or fallow, and nonforested on December 19, 2007. RIN-generating foreign producers or importers of renewable fuel made from planted trees or tree residue from actively managed tree plantations must keep records that serve as evidence that the land from which the feedstock was obtained was cleared prior to December 19, 2007 and actively managed on December 19, 2007.

* * * * *

(2) * * *

(ii) Copies of all reports submitted to EPA under §§ 80.1449 and 80.1451(b).

* * * * *

(d) *Additional requirements for domestic producers of renewable fuel.* Except as provided in paragraphs (g) and (h) of this section, beginning July 1, 2010, any domestic producer of renewable fuel as defined in § 80.1401 that generates RINs for such fuel must keep documents associated with feedstock purchases and transfers that identify where the feedstocks were produced and are sufficient to verify that feedstocks used are renewable biomass (as defined in § 80.1401) if RINs are generated.

* * * * *

(3) Domestic producers of renewable fuel made from planted crops or crop residue from existing foreign agricultural land must keep all the following records:

(i) Records that serve as evidence that the land from which the feedstock was obtained was cleared or cultivated prior to December 19, 2007 and actively managed or fallow, and nonforested on December 19, 2007. The records must be provided by the feedstock producer and must include at least one of the following documents, which must be traceable to the land in question:

(A) Sales records for planted crops, crop residue, or livestock.

(B) Purchasing records for fertilizer, weed control, seeds, seedlings, or other nursery stock.

(C) A written management plan for agricultural purposes.

(D) Documentation of participation in an agricultural program sponsored by a Federal, State, or local government agency.

(E) Documentation of land management in accordance with an agricultural product certification program.

(ii) Records to verify the location where the feedstocks were produced:

(A) Maps or electronic data identifying the boundaries of the land where each type of feedstock was produced; and

(B) Bills of lading, product transfer documents or other commercial documents showing the quantity of feedstock purchased from each area identified in paragraph (d)(3)(ii)(A) of this section, and showing each transfer of custody of the feedstock from the location where it was produced to the renewable fuel facility.

(4) Domestic producers of renewable fuel made from any other type of renewable biomass must have documents from their feedstock supplier certifying that the feedstock qualifies as renewable biomass as defined in § 80.1401, describing the feedstock. Separated yard and food waste and separated municipal solid waste are subject to the requirements in paragraph (j) of this section.

* * * * *

(g) *Aggregate compliance with renewable biomass requirement.* Any producer or RIN-generating importer of renewable fuel made from planted crops or crop residue from existing U.S. agricultural land as defined in § 80.1401 is subject to the aggregate compliance approach and is not required to maintain feedstock records unless EPA publishes a finding that the 2007 baseline amount of agricultural land has been exceeded.

(1) EPA will make a finding concerning whether the 2007 baseline amount of U.S. agricultural land has been exceeded and will publish this finding in the **Federal Register** by November 30 of the year preceding the compliance period.

(2) If EPA finds that the 2007 baseline amount of U.S. agricultural land has been exceeded, beginning on the first day of July of the compliance period in question any producer or RIN-generating importer of renewable fuel made from planted crops and/or crop residue from U.S. agricultural lands as feedstock for renewable fuel for which RINs are generated must keep all the following records:

(i) Records that serve as evidence that the land from which the feedstock was obtained was cleared or cultivated prior to December 19, 2007 and actively managed or fallow, and nonforested on December 19, 2007. The records must be provided by the feedstock producer and

must include at least one of the following documents, which must be traceable to the land in question:

(A) Sales records for planted crops, crop residue or livestock.

(B) Purchasing records for fertilizer, weed control, seeds, seedlings, or other nursery stock.

(C) A written management plan for agricultural purposes.

(D) Documentation of participation in an agricultural program sponsored by a Federal, state, or local government agency.

(E) Documentation of land management in accordance with an agricultural product certification program.

(ii) Records to verify the location where the feedstocks were produced:

(A) Maps or electronic data identifying the boundaries of the land where each type of feedstock was produced; and

(B) Bills of lading, product transfer documents or other commercial documents showing the quantity of feedstock purchased from each area identified in paragraph (g)(2)(ii)(A) of this section, and showing each transfer of custody of the feedstock from the location where it was produced to the renewable fuel facility.

(h) *Alternative renewable biomass tracking requirement.* Any foreign or domestic renewable fuel producer or RIN-generating importer may comply with the following alternative renewable biomass tracking requirement instead of the recordkeeping requirements in paragraphs (c)(1), (d), and (g) of this section:

* * * * *

(6) * * *

(v) EPA may revoke any approval of a survey plan under this section for cause, including an EPA determination that the approved survey plan had proved inadequate in practice or that it was not fully implemented.

* * * * *

(j) A renewable fuel producer that produces fuel from separated yard and food waste as described in § 80.1426(f)(5)(i)(A) and (B) and separated municipal solid waste as described in § 80.1426(f)(5)(i)(C) shall keep all the following additional records:

* * * * *

(2) * * *

(iii) Documents demonstrating the fuel sampling methods used pursuant to § 80.1426(f)(9) and the results of all fuel analyses to determine the non-fossil fraction of fuel made from separated municipal solid waste.

(k) * * *

(1) Contracts and documents memorializing the sale of biogas or renewable electricity for use as transportation fuel relied upon in § 80.1426(f)(10), § 80.1426(f)(11), or for use of biogas for use as process heat to make renewable fuel as relied upon in § 80.1426(f)(12), and the transfer of title of the biogas or renewable electricity and all associated environmental attributes from the point of generation to the facility which sells or uses the fuel for transportation purposes.

(2) Documents demonstrating the volume and energy content of biogas, or kilowatts of renewable electricity, relied upon under § 80.1426(f)(10) that was delivered to the facility which sells or uses the fuel for transportation purposes.

(3) Documents demonstrating the volume and energy content of biogas, or kilowatts of renewable electricity, relied upon under § 80.1426(f)(11), or biogas relied upon under § 80.1426(f)(12), that was placed into the common carrier pipeline (for biogas) or transmission line (for renewable electricity).

(4) Documents demonstrating the volume and energy content of biogas, or kilowatts of renewable electricity, relied upon under § 80.1426(f)(12) at the point of distribution.

(5) Affidavits from the biogas or renewable electricity producer and all parties that held title to the biogas or renewable electricity confirming that title and environmental attributes of the biogas or renewable electricity relied upon under § 80.1426(f)(10) and (11) were used for transportation purposes only, and that the environmental attributes of the biogas relied upon under § 80.1426(f)(12) were used for process heat at the renewable fuel producer's facility, and for no other purpose. The renewable fuel producer shall create and/or obtain these affidavits at least once per calendar quarter.

* * * * *

■ 21. Section 80.1455 is amended by revising paragraphs (a) introductory text, (b)(1), (c) introductory text, and (d)(1) to read as follows:

§ 80.1455 What are the small volume provisions for renewable fuel production facilities and importers?

(a) *Standard volume threshold.* Renewable fuel production facilities located within the United States that produce less than 10,000 gallons of renewable fuel each year, and importers who import less than 10,000 gallons of renewable fuel each year, are not subject to the requirements of § 80.1426(a) and (e) related to the generation and assignment of RINs to batches of renewable fuel. Except as stated in paragraph (b) of this section, such production facilities and importers that do not generate and assign RINs to batches of renewable fuel are also exempt from all the following requirements of this subpart:

* * * * *

(b)(1) Renewable fuel production facilities and importers who produce or import less than 10,000 gallons of renewable fuel each year and that generate and assign RINs to batches of renewable fuel are subject to the provisions of §§ 80.1426, 80.1449 through 80.1452, 80.1454, and 80.1464.

* * * * *

(c) *Temporary volume threshold.* Renewable fuel production facilities located within the United States that produce less than 125,000 gallons of renewable fuel each year are not subject to the requirements of § 80.1426(a) and (e) related to the generation and assignment of RINs to batches of renewable fuel for up to three years, beginning with the calendar year in which the production facility produces its first gallon of renewable fuel. Except as stated in paragraph (d) of this section, such production facilities that do not generate and assign RINs to batches of renewable fuel are also exempt from all the following requirements of this subpart for a maximum of three years:

* * * * *

(d)(1) Renewable fuel production facilities who produce less than 125,000 gallons of renewable fuel each year and that generate and assign RINs to batches of renewable fuel are subject to the provisions of §§ 80.1426, 80.1449 through 80.1452, 80.1454, and 80.1464.

* * * * *

■ 22. Section 80.1460 is amended by revising paragraph (c)(2) to read as follows:

§ 80.1460 What acts are prohibited under the RFS program?

* * * * *

(c) * * *

(2) Use a validly generated RIN to meet the person's RVOs under § 80.1427, or separate and transfer a validly generated RIN, where the person using the RIN ultimately uses the renewable fuel volume associated with the RIN in an application other than for use as transportation fuel, jet fuel, or heating oil (as defined in § 80.1401).

* * * * *

■ 23. Section 80.1463 is amended by revising paragraphs (a) and (b) to read as follows:

§ 80.1463 What penalties apply under the RFS program?

(a) Any person who is liable for a violation under § 80.1461 is subject to a civil penalty as specified in sections 205 and 211(d) of the Clean Air Act, for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b) Any person liable under § 80.1461(a) for a violation of § 80.1460(c) for failure to meet its RVOs, or § 80.1460(e) for causing another person to fail to meet their RVOs during any compliance period, is subject to a separate day of violation for each day in the compliance period.

* * * * *

■ 24. Section 80.1464 is amended as follows:

■ a. By revising paragraphs (a)(1)(i)(A) and (a)(1)(iv)(A), adding paragraph (a)(1)(iv)(D), and removing paragraph (a)(1)(vii).

■ b. By revising paragraphs (b)(1)(i) and (b)(1)(ii).

■ c. By revising paragraph (c)(2)(ii).

§ 80.1464 What are the attest engagement requirements under the RFS program?

* * * * *

(a) * * *

(1) * * *

(i) * * *

(A) The obligated party's volume of all products listed in § 80.1407(c) and (e), or the exporter's volume of each category of exported renewable fuel identified in § 80.1430(b)(1) through (b)(4).

* * * * *

(iv) For exporters, perform all of the following:

(A) Obtain the database, spreadsheet, or other documentation that the exporter maintains for all exported renewable fuel.

* * * * *

(D) Select sample batches in accordance with the guidelines in § 80.127 from each separate category of renewable fuel exported and identified in § 80.1451(a); obtain invoices, bills of lading and other documentation for the representative samples; state whether any of these documents refer to the exported fuel as advanced biofuel or cellulosic biofuel; and report as a finding whether or not the exporter calculated an advanced biofuel or cellulosic biofuel RVO for these fuels pursuant to § 80.1430(b)(1) or § 80.1430(b)(3).

* * * * *

(b) * * *

(1) * * *

(i) Obtain and read copies of the reports required under § 80.1451(b)(1), (d), and (e) for the compliance year.

(ii) Obtain production data for each renewable fuel batch by type of renewable fuel that was produced or imported during the year being reviewed; compute the number of gallon–RINs production dates, types, volumes of denaturant and applicable equivalence values, and production volumes for each batch; report the total RINs generated during the year being reviewed; and state whether this information agrees with the party's reports to EPA. Report as a finding any exceptions.

* * * * *

(c) * * *

(2) * * *

(ii) Obtain the database, spreadsheet, or other documentation used to generate the information in the RIN activity reports; compare the RIN transaction samples reviewed under paragraph (c)(1) of this section with the corresponding entries in the database or spreadsheet and report as a finding any discrepancies; compute the total number of current-year and prior-year RINs owned at the start and end of each quarter, purchased, sold, retired, separated, and reinstated and for parties that reported RIN activity for RINs assigned to a volume of renewable fuel, the volume of renewable fuel owned at the end of each quarter, as represented in these documents; and state whether this information agrees with the party's reports to EPA.

* * * * *

■ 25. Section 80.1465 is amended by revising paragraphs (a)(6) and (d)(1)(ii) to read as follows:

§ 80.1465 What are the additional requirements under this subpart for foreign small refiners, foreign small refineries, and importers of RFS–FRFUEL?

(a) * * *

(6) *Non-RFS–FRFUEL* is transportation fuel produced at a foreign refinery that has not received a small refinery exemption under § 80.1441 or by a foreign refiner that has not received a small refiner exemption under § 80.1442.

* * * * *

(d) * * *

(1) * * *

(ii) Determine the volume of RFS–FRFUEL loaded onto the vessel, temperature-corrected to 60°F (exclusive of any tank bottoms before loading).

* * * * *

[FR Doc. 2010–10851 Filed 5–7–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2005–0161; FRL–9147–7]

RIN 2060–AQ31

Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend certain of the Renewable Fuel Standard program regulations published on March 26, 2010, that are scheduled to take effect on July 1, 2010 (the "RFS2 regulations"). Following publication of the RFS2 regulations, promulgated in response to the requirements of the Energy Independence and Security Act of 2007, EPA discovered some technical errors and areas within the final RFS2 regulations that could benefit from clarification or modification. This proposed rule would amend the RFS2 regulations to make the appropriate corrections, clarifications, and modifications.

DATES: Written comments must be received by June 9, 2010. A request for a public hearing must be received by May 25, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0161, by mail to Air and Radiation Docket, Docket No. EPA–HQ–OAR–2005–0161, Environmental Protection Agency, Mail Code: 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 copies. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section this **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Megan Brachtl, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Mail Code: 6405J, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., 20460; *telephone number:* (202) 343–9473; *fax number:* (202) 343–2802; *e-mail address: brachtl.megan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is EPA issuing this proposed rule?

This document proposes to amend the Renewable Fuel Standard program regulations that were published on March 26, 2010, at 75 FR 14670 (the "RFS2 regulations"). We have published a direct final rule which amends the Renewable Fuel Standard program requirements in the "Rules and Regulations" section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment or request for public hearing, we will not take further action on this proposed rule. If we receive adverse comment or a request for public hearing on a distinct provision of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing, and those provisions will not take effect. The provisions that are not withdrawn will become effective on the date set out in the direct final rule, notwithstanding adverse comment or a request for hearing on any other provision. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does this action apply to me?

Entities potentially affected by this action include those involved with the production, distribution and sale of transportation fuels, including gasoline and diesel fuel, or renewable fuels such as ethanol and biodiesel. Regulated categories and entities affected by this action include:

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated parties
Industry	324110	2911	Petroleum refiners, importers.
Industry	325193	2869	Ethyl alcohol manufacturers.
Industry	325199	2869	Other basic organic chemical manufacturers.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any questions regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section above.

III. What should I consider as I prepare my comments for EPA?

A. *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.

B. *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.

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

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

C. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

IV. Renewable Fuel Standard (RFS2) Program Amendments

EPA is proposing to amend certain of the Renewable Fuel Standard regulations published on March 26, 2010, at 75 FR 14670 (the "RFS2 regulations") that are scheduled to take effect on July 1, 2010. Following publication of the RFS2 regulations, EPA discovered some technical errors and areas that could benefit from clarification or modification. As a result, we are proposing to make the following amendments to the RFS2 regulations at 40 CFR part 80, subpart M.

A. Summary of Amendments

Many of the amendments that we are proposing to amend would address grammatical or typographical errors or provide clarification of language contained in the final RFS2 regulations. As such, these items are listed in the "RFS2 Program Amendments" table, which can be found in the direct final rule that we have published in the "Rules and Regulations" section of this **Federal Register.** A few amendments are being proposed in order to correct regulatory language that inadvertently misrepresented our intent as reflected in the preamble to the final RFS2 regulations. We have provided additional explanation for several of these proposed amendments in the sections IV.B through IV.M below. For additional information and the text of the proposed regulatory changes, see the direct final rule which is located in the Rules section of this **Federal Register.**

B. Advanced Technologies for Renewable Fuel Pathways

The final RFS2 rule includes two corn ethanol pathways in Table 1 of § 80.1426 that require the use of advanced technologies at the production facility as a prerequisite to the generation of RINs. The advanced technologies are listed in Table 2 of § 80.1426. However, only three of these advanced technologies are explicitly defined in § 80.1401. To clarify our intent with regard to implementation of these advanced technologies, we are proposing to create new definitions for membrane separation and raw starch hydrolysis. We are also proposing to replace the existing definition of "fractionation of feedstocks" with a definition for "corn oil fractionation" to be more consistent with the terminology used in Table 2 of § 80.1426. Finally, we propose to modify the definition of "combined heat and power (CHP)" and clarify in Table 2 of § 80.1426 the degree to which it, as well as the other advanced technologies, must be implemented in order to represent a valid advanced technology for the generation of RINs.

C. Baseline Production Volume for All Renewable Fuel Production Facilities

Section 80.1450(b)(1)(v) currently requires information pertinent to facilities described in § 80.1403(c) and (d), *i.e.,* those facilities for which the renewable fuel would be exempted ("grandfathered") from the requirement of 20 percent GHG emission reduction. We propose to modify § 80.1450(b)(1)(v) to require all renewable fuel producers to include information on their facilities' baseline volume when registering for RFS2 in order for EPA to verify renewable fuel production volumes and RIN generation reports. Specifically, all owners and operators of renewable fuel facilities, including those described in § 80.1403(c) and (d), would be required to submit copies of their most recent air permits. In addition, the facilities described in § 80.1403(c) would be required to submit copies of air permits issued no later than December 19, 2007; those described in § 80.1403(d) would be required to submit copies of air permits issued no later than December 31, 2009. Thus, for those facilities we would have information on permitted capacity for 2007 and 2009 from which baseline volumes would be determined. We would also have the most recent permitted capacity for those facilities. In case of discrepancies in permitted capacity between the most recent permits and those representing operation in 2007 and 2009, EPA would be able to ask for additional information. The information required to establish when construction of the grandfathered facilities commenced would be contained in § 80.1450(b)(vi), since § 80.1450(b)(v) would address only baseline volume.

D. Foreign Ethanol Producers

We propose to add a new definition of "foreign ethanol producer" to § 80.1401 that describes foreign producers that produce ethanol for use in transportation fuel, heating oil or jet fuel but who do not add denaturant to their product, and therefore do not technically produce "renewable fuel" as defined in our regulations. We also propose to add amendments to the registration provisions at § 80.1450(b) to require the registration of these parties if the ethanol they produce is used to make renewable fuel for which RINs are ultimately generated. The result of these changes would be to require foreign ethanol facilities that produce ethanol that ultimately becomes part of a renewable fuel for which RINs are generated to provide EPA the same registration information as foreign renewable fuel facilities that export their product to the United States. In both cases the proposed registration information is important for enforcement purposes, including verifying the use of renewable biomass as feedstock and the assignment of appropriate D codes. The changes proposed today conform the regulations to EPA's intent at the time the RFS2 regulations were issued.

E. Permitted Capacity

EPA is proposing to modify the definition of "permitted capacity" to reference the specific permits, by year, which are to be used in establishing the permitted capacity of facilities claiming the exemptions specified in § 80.1403(c) and (d). Permitted capacity is one means by which "baseline volume" is determined for purposes of these exemptions. The registration provisions in the existing regulations at § 80.1450(b)(1)(v)(C) accurately identify the permits (by year) that are relevant in establishing "permitted capacity" for facilities claiming the exemptions in § 80.1403(c) and (d), but EPA neglected to include comparable references in the existing definition of "permitted capacity." Today's proposed amendments would help to clarify the regulations by adding comparable

references in the definition of "permitted capacity."

F. Definition for "Naphtha"

The final RFS2 rule includes the term naphtha in Table 1 to § 80.1426 in the form of both "naphtha" and "cellulosic naphtha." The final rule also includes a definition of naphtha in § 80.1401 indicating that naphtha must be a renewable fuel or fuel blending component. Since naphtha is generally not used as transportation fuel in its neat form, requiring naphtha to be renewable fuel could cause confusion. Therefore, we are proposing to modify the definition of naphtha to indicate that it must be a blendstock or fuel blending component.

G. Grandfathering Exemption for Renewable Fuel Production Facilities

Section 80.1403(c)(2) requires as a condition of the exemption from the 20 percent greenhouse gas (GHG) emission reduction that construction of the renewable fuel facility be completed within 36 months of commencement. In the proposed RFS2 rule, however, the regulatory language required completion of construction within 36 months of EISA enactment, which would be December 19, 2010. In preparing the final rulemaking package we mistakenly removed the proposed language. Today's proposed amendments provide that construction must be completed within 36 months of December 19, 2007, for facilities that commenced construction prior to that date. For facilities that commenced construction after that date, as described in § 80.1403(d), the requirement would remain that construction must be completed within three years of commencement of construction.

H. Use of RFS1 RINs for RFS2 Compliance in 2010

The RFS2 final rule allows RFS1 RINs to be used for compliance purposes under RFS2. With regard to biodiesel and renewable diesel, the regulations at § 80.1427(a)(4)(i) indicate that RFS1 RINs with a D code of 2 and RR code of 15 or 17 may be deemed equivalent to an RFS2 RIN with a D code of 4 representing biomass-based diesel. The RR codes of 15 and 17 were included in this provision because they are indicative of biodiesel and renewable diesel, respectively, as described in the assignment of Equivalence Values in § 80.1415. However, EPA also approved an Equivalence Value of 1.6 for a particular renewable fuel diesel substitute that is compositionally similar to biodiesel. Therefore, we are proposing to modify the RFS1/RFS2 transition provisions at § 80.1427(a)(4)(i) to also allow RFS1 RINs with a D code of 2 and RR code of 16 to be deemed equivalent to an RFS2 RIN with a D code of 4.

I. Engineering Review

We propose to amend § 80.1450(b)(2)(i)(A) and § 80.1450(b)(2)(i)(B) to clarify the types of professional engineers who may qualify to conduct the third-party engineering review for renewable fuel facilities located in the United States or in a foreign country. The original requirements in the final regulations in § 80.1450(b)(2)(i)(A) state that domestic renewable fuel production facilities must have an engineering review conducted by a "Professional Chemical Engineer." For foreign facilities, § 80.1450(b)(2)(i)(B) provides that the review should be conducted by "a licensed professional engineer or foreign equivalent who works in the chemical engineering field." EPA interprets these provisions similarly but is proposing to amend the regulations to clarify that the requirements are the same. For both domestic and foreign facilities the third party engineering review would be conducted by a professional engineer (or foreign equivalent) who works in the chemical engineering field. EPA views renewable fuel production to fall generally within the chemical engineering field, and is proposing to amend the regulations to clarify that professional work experience related to renewable fuel production will satisfy this requirement. As required in § 80.1450(b)(2)(ii)(E), the professional engineer would provide to EPA documentation of their qualifications to conduct the engineering review, including but not limited to proof of a license as a professional engineer and relevant work experience. Additional language is proposed to clarify that the professional engineer must also be an independent third-party, which would be further defined in § 80.1450(b)(2)(ii), to qualify to conduct the engineering review.

J. Process Heat Fuel Supply Plan

We are proposing to move the requirements for the process heat fuel supply plan from § 80.1450(b)(3) and to insert them under § 80.1450(b)(1)(iv) to minimize duplicative requirements and to provide clear instruction that the process heat fuel supply plan is required to be submitted as part of registration and is subject to verification in the engineer review required in § 80.1450(b)(2).

The requirements for the process heat fuel supply plan would be divided into two subparts in these proposed amendments. Section 80.1450(b)(1)(iv)(A) would be applicable to all renewable fuel producers and require submissions of information on any process heat fuel that is used at a renewable fuel facility. Examples of process heat fuel include biomass, biogas, coal, and natural gas. The information proposed to be submitted on the type of process heat fuel and its supply source would help EPA determine if a renewable fuel facility qualifies as a grandfathered facility pursuant to § 80.1403(d) and help verify a producer's fuel pathway pursuant to Table 1 to § 80.1426.

The information proposed to be submitted under § 80.1450(b)(1)(iv)(B) for renewable fuel producers using biogas as process heat fuel would help EPA verify the contractual pathway of the biogas from the supplier to the renewable fuel facility for the purposes of confirming the applicable fuel pathway pursuant to Table 1 to § 80.1426 and to § 80.1426(f)(12).

The information proposed to be submitted under § 80.1450(b)(1)(iv)(A) and (b)(1)(iv)(B) would also help EPA in our evaluation of the engineering review that is conducted and submitted by an independent third party engineer pursuant to § 80.1450(b)(2). Since the requirements for the process heat fuel supply plan would be revised and relocated within the regulations under the proposed amendments, the requirements stipulated in the original § 80.1450(b)(3)(ii) through (iv) would be deleted to avoid redundancy.

K. Updating Registration To Account for Facility Changes Not Affecting the Renewable Fuel Category

Section 80.1450(d)(2) currently requires producers of renewable fuel to update their facility registration seven (7) days prior to any change to the facility that does not affect the renewable fuel category for which the producer is registered. EPA is proposing to revise § 80.1450(d)(2) to narrow the scope of changes that would require a producer to update their registration. The revisions would clarify that not just any change, but only changes to the facility that actually affect the information submitted to EPA in the producer's original registration, would trigger such a registration update.

L. Applicability of the Renewable Biomass Aggregate Compliance Approach

Sections 80.1451 and 80.1454 include requirements for renewable fuel producers to report and maintain records to affirm that their feedstocks

meet the definition of renewable biomass and come from qualifying land. Through proposed amendments to these two sections, EPA would clarify our intent, as discussed in the preamble to the final RFS2 regulations, that producers, either domestic or foreign, who use crops and crop residue from existing U.S. agricultural land be covered by the renewable biomass aggregate compliance approach for those particular feedstocks, as described in § 80.1454(g), and need not keep detailed records or report to EPA concerning whether those particular feedstocks meet the definition of renewable biomass. However, if a producer (domestic or foreign) uses any type of feedstock other than crops and crop residue from existing U.S. agricultural land, then he or she must keep records and report to EPA to demonstrate that their feedstocks meet the definition of renewable biomass. This would include maintaining records that show that the feedstock type is one allowed under the renewable biomass definition under the RFS2 regulations and that the feedstock is harvested from qualifying lands, where applicable.

M. Additional Recordkeeping Requirements for Renewable Fuel Producers Using Separated Yard and Food Waste as a Feedstock

Section 80.1454(d)(3) currently requires that domestic renewable fuel producers using feedstock other than planted trees or tree residue from actively managed tree plantations, slash or pre-commercial thinnings from non-federal forestland, biomass from areas at risk of wildfire, crops or crop residue covered by the aggregate compliance approach under § 80.1454(g), or any feedstock covered by an alternative biomass tracking approach under § 80.1454(h) must maintain documents from their feedstock supplier certifying that their feedstocks meet the definition of renewable biomass. While separated yard and food waste falls into this category, parties using these feedstocks are also subject to the additional recordkeeping requirements in § 80.1454(j). Therefore, EPA is proposing to revise § 80.1454(d)(3) to clarify that renewable fuel producers that use separated yard and food waste as a feedstock are subject to the additional requirements in § 80.1454(j).

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The corrections, clarifications, and modifications to the final RFS2 regulations contained in this rule are within the scope of the information collection requirements submitted to the Office of Management and Budget (OMB) for the final RFS2 regulations. OMB has partially approved the information collection requirements contained in the existing regulations at 40 CFR part 80, subpart M under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0637. The remaining RFS2 information collection requirements are currently pending approval at OMB (EPA ICR No. 2333.02). The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

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 a 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 today's rule 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 which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this proposal will not have a significant economic impact on a substantial number of small entities. This proposal will not impose any requirements on small entities that were not already considered under the final RFS2 regulations, as it makes relatively minor corrections and modifications to those regulations. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposal does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. We have determined that this action will not result in expenditures of $100 million or more for the above parties and thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This proposal is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and modifications to the RFS2 regulations.

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. This action only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and makes relatively minor corrections and

modifications to the RFS2 regulations. Thus, Executive Order 13132 does not apply to this action.

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 action from State and local officials.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposal does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. This action makes relatively minor corrections and modifications to the RFS regulations, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action. Nonetheless, EPA specifically solicits additional comment on this proposed action from tribal officials.

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

EPA interprets EO 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 EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This proposal is not subject to Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 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. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider 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 proposal will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. These proposed amendments would not relax the control measures on sources regulated by the RFS regulations and therefore would not cause emissions increases from these sources.

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Agriculture, Air pollution control, Confidential business information, Diesel Fuel, Energy, Forest and forest products, Fuel additives, Gasoline, Imports, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: April 30, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–10854 Filed 5–7–10; 8:45 am]

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